

***United States Court of Appeals  
for the Second Circuit***



**ADDENDUM**





74-24331

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

CIVIL AERONAUTICS BOARD,

Plaintiff-Appellee,

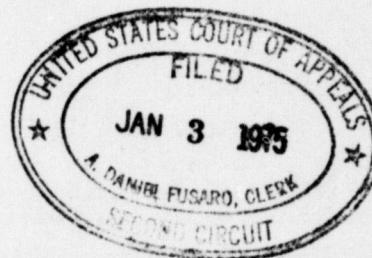
v.

CAREFREE TRAVEL, INC., VACATION VENTURES, INC.,  
and DORAN JACOBS;  
SURREY INTERNATIONAL TRAVEL, INC., ESTHER ZETLIN  
and JACK GORCEY:  
ERNIE PIKE ASSOCIATES, LTD., ERNIE PIKE  
and HENRY ZETLIN,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

ADDENDUM TO THE BRIEF FOR PLAINTIFF-APPELLEE



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SUBCHAPTER I.—GENERAL PROVISIONS

§ 1301. Definitions

As used in this chapter, unless the context otherwise requires—

(1) "Administrator" means the Administrator of the Federal Aviation Agency.

(2) "Aeronautics" means the science and art of flight.

(3) "Air carrier" means any citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage in air transportation: *Provided*, That the Board may by order relieve air carriers who are not directly engaged in the operation of aircraft in air transportation from the provisions of this chapter to the extent and for such periods as may be in the public interest.

(4) "Air commerce" means interstate, overseas, or foreign air commerce or the transportation of mail by aircraft or any operation or navigation of aircraft within the limits of any Federal airway or any operation or navigation of aircraft which directly affects, or which may endanger safety in, interstate, overseas, or foreign air commerce.

(5) "Aircraft" means any contrivance now known or hereafter invented, used, or designed for navigation of or flight in the air.

(6) "Aircraft engine" means an engine used, or intended to be used, for propulsion of aircraft and includes all parts, appurtenances, and accessories thereof other than propellers.

(7) "Airman" means any individual who engages, as the person in command or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way; and (except to the extent the Administrator may otherwise provide with respect to individuals employed outside the United States) any individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft, aircraft engines, propellers, or appliances; and any individual who serves in the capacity of aircraft dispatcher or air-traffic control-tower operator.

(8) "Air navigation facility" means any facility used in, available for use in, or designed for use in, aid of air navigation, including landing areas, lights, any apparatus or equipment for disseminating weather information, for signaling, for radio-directional finding, or for radio or other electrical communication, and any other structure or mechanism having a similar purpose for guiding or controlling flight in the air or the landing and take-off of aircraft.

(9) "Airport" means a landing area used regularly by aircraft for receiving or discharging passengers or cargo.

(10) "Air transportation" means interstate, overseas, or foreign air transportation or the transportation of mail by aircraft.

(11) "Appliances" means instruments, equipment, apparatus, parts, appurtenances, or accessories, of whatever description, which are used, or are capable of being or intended to be used, in the navigation, operation, or control of aircraft in flight (including parachutes and including communication equipment and any other mechanism or mechanisms installed in or attached to aircraft during flight), and which are not a part or parts of aircraft, aircraft engines, or propellers.

(12) "Board" means the Civil Aeronautics Board.

(13) "Citizen of the United States" means (a) an individual who is a citizen of the United States or of one of its possessions, or (b) a partnership of which each member is such an individual, or (c) a corporation or association created or organized under the laws of the United States or of any State, Territory, or possession of the United States, of which the president and two-thirds or more of the board of directors and other managing officers thereof are such individuals and in which at least 75 per centum of the voting interest is owned or controlled by persons who are citizens of the United States or of one of its possessions.

(14) "Civil aircraft" means any aircraft other than a public aircraft.

(15) "Civil aircraft of the United States" means any aircraft registered as provided in this chapter.

(32) The term "special aircraft jurisdiction of the United States" includes the following aircraft while in flight—

(a) civil aircraft of the United States;

(b) aircraft of the national defense forces of the United States;

and

(c) any other aircraft—

(1) within the United States, or

(2) outside the United States which has its next scheduled destination or last point of departure in the United States provided that in either case it next actually lands in the United States.

For the purpose of this definition, an aircraft is considered to be in flight from the moment when power is applied for the purpose of takeoff until the moment when the landing run ends.

(33) "Supplemental air carrier" means an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation.

(34) "Supplemental air transportation" means charter trips, including inclusive tour charter trips, in air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 1371(d) (3) of this title to supplement the scheduled service authorized by certificates of public convenience and necessity issued pursuant to sections 1371(d) (1) and (2) of this title. Nothing in this paragraph shall permit a supplemental air carrier to sell or offer for sale an inclusive tour in air transportation by selling or offering for sale individual tickets directly to members of the general public, or to do so indirectly by controlling, being controlled by, or under common control with, a person authorized by the Board to make such sales.

(35) "Ticket agent" means any person, not an air carrier or a foreign air carrier and not a bona fide employee of an air carrier or foreign air carrier, who, as principal or agent, sells or offers for sale any air transportation, or negotiates for, or holds himself out by solicitation, advertisement, or otherwise as one who sells, provides, furnishes, contracts or arranges for, such transportation.

(36) "United States" means the several States, the District of Columbia, and the several Territories and possessions of the United States, including the territorial waters and the overlying airspace thereof. As amended Pub.L. 90-514, § 1, Sept. 26, 1968, 82 Stat. 867; Pub.L. 91-449, § 1(1), (2), Oct. 14, 1970, 84 Stat. 921.



**§ 1302. Consideration of matters in public interest by Board**

In the exercise and performance of its powers and duties under this chapter, the Board shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity:

(a) The encouragement and development of an air-transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

(b) The regulation of air transportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound economic conditions in, such transportation, and to improve the relations between, and coordinate transportation by, air carriers;

(c) The promotion of adequate, economical, and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices;

(d) Competition to the extent necessary to assure the sound development of an air-transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

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**§ 1324. General powers and duties of the Board—Performance of acts; conduct of investigations; orders, rules, regulations, and procedure**

(a) The Board is empowered to perform such acts, to conduct such investigations, to issue and amend such orders, and to make and amend such general or special rules, regulations, and procedure, pursuant to and consistent with the provisions of this chapter, as it shall deem necessary to carry out the provisions of, and to exercise and perform its powers and duties under, this chapter.

**Cooperation with State aeronautical agencies**

(b) The Board is empowered to confer with or to hold joint hearings with any State aeronautical agency, or other State agency, in connection with any matter arising under this chapter within its jurisdiction, and to avail itself of the cooperation, services, records, and facilities of such State agencies as fully as may be practicable in the

~~administration and enforcement of this chapter.~~

**Exchange of information with foreign governments**

(c) The Board is empowered to exchange with foreign governments, through appropriate agencies of the United States, information pertaining to aeronautics.

**Report of proceedings and investigations; publication; evidence**

(d) Except as may be otherwise provided in this chapter, the Board shall make a report in writing in all proceedings and investigations under this chapter in which formal hearings have been held, and shall state in such report its conclusions together with its decision, order, or requirement in the premises. All such reports shall be entered of record and a copy thereof shall be furnished to all parties to the proceeding or investigation. The Board shall provide for the publication of such reports, and all other reports, orders, decisions, rules, and regulations issued by it under this chapter in such form and man-

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ner as may be best adapted for public information and use. Publications purporting to be published by the Board shall be competent evidence of the orders, decisions, rules, regulations, and reports of the Board therein contained in all courts of the United States, and of the several States, Territories, and possessions thereof, and the District of Columbia, without further proof or authentication thereof. Pub. L. 85-726, Title II, § 204, Aug. 23, 1958, 72 Stat. 743.

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**SUBCHAPTER IV.—AIR CARRIER ECONOMIC REGULATION**

**§ 1371. Certificate of public convenience and necessity—Essentiality**

(a) No air carrier shall engage in any air transportation unless there is in force a certificate issued by the Board authorizing such air carrier to engage in such transportation.

**Application**

(b) Application for a certificate shall be made in writing to the Board and shall be so verified, shall be in such form and contain such information, and shall be accompanied by such proof of service upon such interested persons, as the Board shall by regulation require.

**Notice of application; filing of protest or memorandum; hearing**

(c) Upon the filing of any such application, the Board shall give due notice thereof to the public by posting a notice of such application in the office of the secretary of the Board and to such other persons as the Board may by regulation determine. Any interested person may file with the Board a protest or memorandum of opposition to or in support of the issuance of a certificate. Such application shall be set for public hearing, and the Board shall dispose of such application as speedily as possible.

**Issuance**

(d) (1) The Board shall issue a certificate authorizing the whole or any part of the transportation covered by the application, if it finds that the applicant is fit, willing, and able to perform such transportation properly, and to conform to the provisions of this chapter and the rules, regulations, and requirements of the Board hereunder, and that such transportation is required by the public convenience and necessity; otherwise such application shall be denied.

(2) In the case of an application for a certificate to engage in temporary air transportation, the Board may issue a certificate authorizing the whole or any part thereof for such limited periods as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform such transportation and to conform to the provisions of this chapter and the rules, regulations, and requirements of the Board hereunder.

(3) In the case of an application for a certificate to engage in supplemental air transportation, the Board may issue a certificate, to any applicant not holding a certificate under paragraph (1) or (2) of this subsection, authorizing the whole or any part thereof, and for such periods, as may be required by the public convenience and necessity.



if it finds that the applicant is fit, willing, and able properly to perform the transportation covered by the application and to conform to the provisions of this chapter and the rules, regulations, and requirements of the Board hereunder. Any certificate issued pursuant to this paragraph shall contain such limitations as the Board shall find necessary to assure that the service rendered pursuant thereto will be limited to supplemental air transportation as defined in this chapter.

**Terms, conditions, and limitations**

(e) (1) Each certificate issued under this section shall specify the terminal points and intermediate points, if any, between which the air carrier is authorized to engage in transportation of the service to be rendered; and there shall be attached to the exercise of the privileges granted by the certificate, or amendment thereto, such reasonable terms, conditions, and limitations as the public interest may require.

(2) A certificate issued under this section to engage in foreign air transportation shall, insofar as the operation is to take place without the United States, designate the terminal and intermediate points only insofar as the Board shall deem practicable, and otherwise shall designate only the general route or routes to be followed. Any air carrier holding a certificate for foreign air transportation shall be authorized to handle and transport mail of countries other than the United States.

(3) A certificate issued under this section to engage in supplemental air transportation shall designate the terminal and intermediate points only insofar as the Board shall deem practicable and otherwise shall designate only the geographical area or areas within or between which service may be rendered.

(4) No term, condition, or limitation of a certificate shall restrict the right of an air carrier to add to or change schedules, equipment, accommodations, and facilities for performing the authorized transportation and service as the development of the business and the demands of the public shall require; except that the Board may impose such terms, conditions, or limitations in a certificate for supplemental air transportation when required by subsection (d) (3) of this section.

(5) No air carrier shall be deemed to have violated any term, condition, or limitation of its certificate by landing or taking off during an emergency at a point not named in its certificate or by operating in an emergency, under regulations which may be prescribed by the Board, between terminal and intermediate points other than those specified in its certificate.



#### SUBCHAPTER IV.—AIR CARRIER ECONOMIC REGULATION.

##### § 1371. Certificate of public convenience and necessity

[See main volume for text of (a) to (d)]

##### Terms, conditions, and limitations

[See main volume for text of (e)(1) to (5)]

(6) Any air carrier, other than a supplemental air carrier, may perform charter trips (including inclusive tour charter trips) or any other special service, without regard to the points named in its certificate, or the type of service provided therein, under regulations prescribed by the Board.

##### Effective date and duration

(f) Each certificate shall be effective from the date specified therein, and shall continue in effect until suspended or revoked as hereinafter provided, or until the Board shall certify that operation thereunder has ceased, or, if issued for a limited period of time under subsection (d) (2) of this section, shall continue in effect until the expiration thereof, unless, prior to the date of expiration, such certificate shall be suspended or revoked as provided herein, or the Board shall certify that operations thereunder have ceased: *Provided*, That if any service authorized by a certificate is not inaugurated within such period, not less than ninety days after the date of the authorization as shall be fixed by the Board, or if, for a period of ninety days or such other period as may be designated by the Board any such service is not operated, the Board may by order, entered after notice and hearing, direct that such certificate shall thereupon cease to be effective to the extent of such service.

##### Alteration, amendment, modification, suspension, or revocation

(g) The Board upon petition or complaint or upon its own initiative, after notice and hearings, may alter, amend, modify, or suspend any such certificate, in whole or in part, if the public convenience and necessity so require, or may revoke any such certificate, in whole or in part, for intentional failure to comply with any provision of this subchapter or any order, rule, or regulation issued hereunder or any term, condition, or limitation of such certificate: *Provided*, That no such certificate shall be revoked unless the holder thereof fails to comply, within a reasonable time to be fixed by the Board, with an order of the Board commanding obedience to the provision, or to the order (other than an order issued in accordance with this proviso), rule, regulation, term, condition, or limitation found by the Board to have been violated. Any interested person may file with the Board a protest or memorandum in support of or in opposition to the alteration, amendment, modification, suspension, or revocation of the certificate.

##### Transfer

(h) No certificate may be transferred unless such transfer is approved by the Board as being consistent with the public interest.

##### Rights in the use of airspace, airways, landing areas, or air-navigation facilities

(i) No certificate shall confer any proprietary, property, or exclusive right in the use of any airspace, Federal airway, landing area, or air-navigation facility.

**Abandonment of routes**

(j) No air carrier shall abandon any route, or part thereof, for which a certificate has been issued by the Board, unless, upon the application of such air carrier, after notice and hearing, the Board shall find such abandonment to be in the public interest. Any interested person may file with the Board a protest or memorandum of opposition to or in support of any such abandonment. The Board may, by regulations or otherwise, authorize such temporary suspension of service as may be in the public interest.

**Compliance with labor legislation**

(k) (1) Every air carrier shall maintain rates of compensation, maximum hours, and other working conditions and relations of all of its pilots and copilots who are engaged in interstate air transportation within the continental United States (not including Alaska) so as to conform with decision numbered 83 made by the National Labor Board on May 10, 1934, notwithstanding any limitation therein as to the period of its effectiveness.

(2) Every air carrier shall maintain rates of compensation for all of its pilots and copilots who are engaged in overseas or foreign air transportation or air transportation wholly within a Territory or possession of the United States, the minimum of which shall be not less, upon an annual basis, than the compensation required to be paid under said decision 83 for comparable service to pilots and copilots engaged in interstate air transportation within the continental United States (not including Alaska).

(3) Nothing herein contained shall be construed as restricting the right of any such pilots or copilots, or other employees, of any such air carrier to obtain by collective bargaining higher rates of compensation or more favorable working conditions or relations.

(4) It shall be a condition upon the holding of a certificate by any air carrier that such carrier shall comply with Section 101-138 of Title 45.

(5) The term "pilot" as used in this subsection shall mean an employee who is responsible for the manipulation of or who manipulates the flight controls of an aircraft while under way including take-off and landing of such aircraft, and the term "copilot" as used in this subsection shall mean an employee any part of whose duty is to assist or relieve the pilot in such manipulation, and who is properly qualified to serve as, and holds a currently effective airman certificate authorizing him to serve as, such pilot or copilot.

**Carriage of mail**

(l) Whenever so authorized by its certificate, any air carrier shall provide necessary and adequate facilities and service for the trans-



por tion of mail, and shall transport mail whenever required by the Postmaster General. Such air carrier shall be entitled to receive reasonable compensation therefor as hereinafter provided.

**Application for new mail service**

(m) Whenever, from time to time, the Postmaster General shall find that the needs of the Postal Service require the transportation of mail by aircraft between any points within the United States or between the United States and foreign countries, in addition to the transportation of mail authorized in certificates then currently effective, the Postmaster General shall certify such finding to the Board and file therewith a statement showing such additional service and the facilities necessary in connection therewith, and a copy of such certification and statement shall be posted for at least twenty days in the office of the secretary of the Board. The Board shall, after notice and hearing, and if found by it to be required by the public convenience and necessity, make provision for such additional service, and the facilities necessary in connection therewith, by issuing a new certificate or certificates or by amending an existing certificate or certificates in accordance with the provisions of this section.

**Additional powers and duties of Board with respect to supplemental air carriers**

(n) (1) No certificate to engage in supplemental air transportation, and no special operating authorization described in section 1387 of this title, shall be issued or remain in effect unless the applicant for such certificate or the supplemental air carrier, as the case may be, complies with regulations or orders issued by the Board governing the filing and approval of policies of insurance, in the amount prescribed by the Board, conditioned to pay, within the amount of such insurance, amounts for which such applicant or such supplemental air carrier may become liable for bodily injuries to or the death of any person, or for loss of or damage to property of others, resulting from the negligent operation or maintenance of aircraft under such certificate or such special operating authorization.

(2) In order to protect travelers and shippers by aircraft operated by supplemental air carriers, the Board may require any supplemental air carrier to file a performance bond or equivalent security arrangement, in such amount and upon such terms as the Board shall prescribe, to be conditioned upon such supplemental air carrier's making appropriate compensation to such travelers and shippers, as prescribed by the Board, for failure on the part of such carrier to perform air transportation services in accordance with agreements therefor.

(3) If any service authorized by a certificate to engage in supplemental air transportation is not performed to the minimum extent

prescribed by the Board, it may by order, entered after notice and hearing, direct that such certificate shall thereupon cease to be effective to the extent of such service.

(4) The requirement that each applicant for a certificate to engage in supplemental air transportation must be found to be fit, willing, and able properly to perform the transportation covered by his application and to conform to the provisions of this chapter and the rules, regulations, and requirements of the Board under this chapter, shall be a continuing requirement applicable to each supplemental air carrier with respect to the transportation authorized by, and currently furnished or proposed to be furnished under, such carrier's certificate. The Board shall by order, entered after notice and hearing, modify, suspend, or revoke such certificate, in whole or in part, for failure of such carrier (A) to comply with the continuing requirement that such carrier be so fit, willing, and able, or (B) to file such reports as the Board may deem necessary to determine whether such carrier is so fit, willing, and able.

(5) In any case in which the Board determines that the failure of a supplemental air carrier to comply with the provisions of paragraph (1), (3), or (4) of this subsection, or regulations or orders of the Board thereunder, requires, in the interest of the rights, welfare, or safety of the public, immediate suspension of such carrier's certificate, the Board shall suspend such certificate, in whole or in part, without notice or hearing, for not more than thirty days. The Board shall immediately enter upon a hearing to determine whether such certificate should be modified, suspended, or revoked and, pending the completion of such hearing, the Board may further suspend such certificate for additional periods aggregating not more than sixty days. If the Board determines that a carrier whose certificate is suspended under this paragraph comes into compliance with the provisions of paragraphs (1), (3), and (4) of this subsection, and regulations and orders of the Board thereunder, the Board may immediately terminate the suspension of such certificate and any pending proceeding commenced under this paragraph, but nothing in this sentence shall preclude the Board from imposing on such carrier a civil penalty for any violation of such provisions, regulations, or orders.

(6) The Board shall prescribe such regulations and issue such orders as may be necessary to carry out the provisions of this subsection. Pub.L. 85-726, Title IV, § 401, Aug. 23, 1958, 72 Stat. 754; Pub.L. 87-528, §§ 2-4, July 10, 1962, 76 Stat. 143.

**§ 1374. Rates for carriage for persons and property; duty to provide service, rates, and divisions; foreign air transportation rates; discrimination**

(a) (1) It shall be the duty of every air carrier to provide and furnish interstate and overseas air transportation, as authorized by its certificate, upon reasonable request therefor and to provide reasonable through service in such air transportation in connection with other air carriers; to provide safe and adequate service, equipment, and facilities in connection with such transportation; to establish, observe, and enforce just and reasonable individual and joint rates, fares, and charges, and just and rea-

sonable classifications, rules, regulations, and practices relating to such air transportation; and, in case of such joint rates, fares, and charges, to establish just, reasonable, and equitable divisions thereof as between air carriers participating therein which shall not unduly prefer or prejudice any of such participating air carriers.

(2) It shall be the duty of every air carrier and foreign air carrier to establish, observe, and enforce just and reasonable individual and joint rates, fares, and charges, and just and reasonable classifications, rules, regulations, and practices relating to foreign air transportation; and, in case of such joint rates, fares, and charges, to establish just, reasonable, and equitable divisions thereof as between air carriers or foreign air carriers participating therein which shall not unduly prefer or prejudice any of such participating air carriers or foreign air carriers.



### **§ 1385. Inquiry into air carrier management**

For the purpose of exercising and performing its powers and duties under this chapter, the Board is empowered to inquire into the management of the business of any air carrier and, to the extent reasonably necessary for any such inquiry, to obtain from such carrier, and from any person controlling or controlled by, or under common control with, such air carrier, full and complete reports and other information. Pub.L. 85-726, Title IV, § 415, Aug. 23, 1958, 72 Stat. 770.

### **§ 1386. Classification and exemption of carriers**

(a) The Board may from time to time establish such just and reasonable classifications or groups of air carriers for the purposes of this subchapter as the nature of the services performed by such air carriers shall require; and such just and reasonable rules and regulations, pursuant to and consistent with the provisions of this subchapter, to be observed by each such class or group, as the Board finds necessary in the public interest.

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Note 1

(b) (1) The Board, from time to time and to the extent necessary, may (except as provided in paragraph (2) of this subsection) exempt from the requirements of this subchapter or any provision thereof, or any rule, regulation, term, condition, or limitation prescribed thereunder, any air carrier or class of air carriers, if it finds that the enforcement of this subchapter or such provision, or such rule, regulation, term, condition, or limitation is or would be an undue burden on such air carrier or class of air carriers by reason of the limited extent of, or unusual circumstances affecting, the operations of such air carrier or class of air carriers and is not in the public interest.

(2) The Board shall not exempt any air carrier from any provision of subsection (k) of section 1371 of this title, except that (A) any air carrier not engaged in scheduled air transportation, and (B), to the extent that the operations of such air carrier are conducted during daylight hours, any air carrier engaged in scheduled air transportation, may be exempted from the provisions of paragraphs (1) and (2) of such subsection if the Board finds, after notice and hearing, that, by reason of the limited extent of, or unusual circumstances affecting, the operations of any such air carrier, the enforcement of such paragraphs is or would be such an undue burden on such air carrier as to obstruct its development and prevent it from beginning or continuing operations, and that the exemption of such air carrier from such paragraphs would not adversely affect the public interest: *Provided*, That nothing in this subsection shall be deemed to authorize the Board to exempt any air carrier from any requirement of this subchapter, or any provision thereof, or any rule, regulation, term, condition, or limitation prescribed thereunder which provides for maximum flying hours for pilots or copilots. Pub.L. 85-726, Title IV, § 416, Aug. 23, 1958, 72 Stat. 771.

## SUBCHAPTER IX.—PENALTIES

### § 1471. Civil penalties; compromise; liens

(a) (1) Any person who violates (A) any provision of subchapter III, IV, V, VI, VII, or XII of this chapter or any rule, regulation, or order issued thereunder, or under section 1482(i) of this title, or any term, condition, or limitation of any permit or certificate issued under subchapter IV of this chapter, or (B) any rule or regulation issued by the Postmaster General under this chapter, shall be subject to a civil penalty. If such violation is a continuing one, each day of such violation shall constitute a separate offense: *Provided*, That this subsection shall not apply to members of the Armed Forces of the United States, or those civilian employees of the Department of Defense who are subject to the provisions of the Uniform Code of Military Justice, while engaged in the performance of their official duties; and the appropriate military authorities shall be responsible for taking any necessary disciplinary action with respect thereto and for making to the Administrator or Board, as appropriate, a timely report of any such action taken.

(2) Any such civil penalty may be compromised by the Administrator in the case of violations of subchapters III, V, VI, or XII of this chapter, or any rule, regulation, or order issued thereunder, or by the Board in the case of violations of subchapters IV or VII of this chapter, or any rule, regulation, or order issued thereunder, or under section 1482(i) of this title, or any term, condition, or limitation of any permit or certificate issued under subchapter IV of this chapter, or by the Postmaster General in the case of regulations issued by him.

The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged.

(b) In case an aircraft is involved in such violation and the violation is by the owner or person in command of the aircraft, such aircraft shall be subject to lien for the penalty: *Provided*, That this subsection shall not apply to a violation of a rule or regulation of the Postmaster General. Pub.L. 85-726, Title IX, § 901, Aug. 23, 1958, 72 Stat. 783; Pub.L. 87-528, § 12, July 10, 1962, 76 Stat. 149.

### § 1472. Criminal penalties—Generally

(a) Any person who knowingly and willfully violates any provision of this chapter (except subchapters III, V, VI, VII, and XII of this chapter), or any order, rule, or regulation issued by the Administrator or by the Board under any such provision or any term, condition, or limitation of any certificate or permit issued under subchapter IV of this chapter, for which no penalty is otherwise provided



**Failure to file reports; falsification of records**

(e) Any air carrier, or any officer, agent, employee, or representative thereof, who shall, knowingly and willfully, fail or refuse to make a report to the Board or Administrator as required by this chapter, or to keep or preserve accounts, records, and memoranda in the form and manner prescribed or approved by the Board or Administrator, or shall, knowingly and willfully, falsify, mutilate, or alter any such report, account, record, or memorandum, or shall knowingly and willfully file any false report, account, record, or memorandum, shall be deemed guilty of a misdemeanor and, upon conviction thereof, be subject for each offense to a fine of not less than \$100 and not more than \$5,000.

**Divulging information; information to Congressional committees**

(f) If the Administrator or any member of the Board, or any officer or employee of either, shall knowingly and willfully divulge any fact or information which may come to his knowledge during the course of an examination of the accounts, records, and memoranda of any air carrier, or which is withheld from public disclosure under section 1504 of this title, except as he may be directed by the Administrator or the Board in the case of information ordered to be withheld by either, or by a court of competent jurisdiction or a judge thereof, he shall upon conviction thereof be subject for each offense to a fine of not more than \$5,000 or imprisonment for not more than two years, or both: *Provided*, That nothing in this section shall authorize the withholding of information by the Administrator or Board from the duly authorized committees of the Congress.

**Refusal to testify**

(g) Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, or documents, if in his power to do so, in obedience to the subpoena or lawful requirement of the Board or Administrator, shall be guilty of a misdemeanor and, upon conviction thereof, shall be subject to a fine of not less than \$100 nor more than \$5,000, or imprisonment for not more than one year, or both.

**Transportation of explosives and other dangerous articles**

(h) (1) Any person who knowingly delivers or causes to be delivered to an air carrier or to the operator of any civil aircraft for transportation in air commerce, or who causes the transportation in air commerce of, any shipment, baggage, or property, the transportation of which would be prohibited by any rule, regulation, or requirement prescribed by the Administrator under subchapter VI of this chapter, relating to the transportation, packing, marking, or description of explosives or other dangerous articles shall, upon conviction

**§ 1485. Orders, notices, and service—Effective date of orders; emergency orders**

(a) Except as otherwise provided in this chapter, all orders, rules, and regulations of the Board or the Administrator shall take effect within such reasonable time as the Board or Administrator may prescribe, and shall continue in force until their further order, rule, or regulation, or for a specified period of time, as shall be prescribed in the order, rule, or regulation: *Provided*, That whenever the Administrator is of the opinion that an emergency requiring immediate action exists in respect of safety in air commerce, the Administrator is authorized either upon complaint or his own initiative without complaint, at once, if he so orders, without answer or other form of pleading by the interested person or persons, and with or without notice, hearing, or the making or filing of a report, to make such just and reasonable orders, rules, or regulations, as may be essential in the interest of safety in air commerce to meet such emergency: *Provided further*, That the Administrator shall immediately initiate proceedings relating to the matters embraced in any such order, rule, or regulation, and shall, insofar as practicable, give preference to such proceedings over all others under this chapter.

**Designation of agent for service**

(b) It shall be the duty of every air carrier and foreign air carrier to designate in writing an agent upon whom service of all notices and process and all orders, decisions, and requirements of the Board and the Administrator may be made for and on behalf of said carrier, and to file such designation with the Administrator and in the office of the secretary of the Board, which designation may from time to time be changed by like writing similarly filed. Service of all notices and process and orders, decisions, and requirements of the Administrator or the Board may be made upon such carrier by service upon such designated agent at his office or usual place of residence with like effect as if made personally upon such carrier, and in default of such designation of such agent, service of any notice or other process in any proceedings before said Administrator or Board or of any order, decision, or requirements of the Administrator or Board, may be made by posting such notice, process, order, requirement, or decision in the office of the Administrator or with the secretary of the Board.

**Manner of service**

(c) Service of notices, processes, orders, rules, and regulations upon any person may be made by personal service, or upon an agent designated in writing for the purpose, or by registered or certified mail addressed to such person or agent. Whenever service is made



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by registered or certified mail, the date of mailing shall be considered as the time when service is made.

### Suspension or modification of orders

(d) Except as otherwise provided in this chapter, the Administrator or the Board is empowered to suspend or modify their orders upon such notice and in such manner as they shall deem proper.

### Compliance with orders

(e) It shall be the duty of every person subject to this chapter, and its agents and employees, to observe and comply with any order, rule, regulation, or certificate issued by the Administrator or the Board under this chapter affecting such person so long as the same shall remain in effect.

### Findings of fact; service of orders

(f) Every order of the Administrator or the Board shall set forth the findings of fact upon which it is based, and shall be served upon the parties to the proceeding and the persons affected by such order. Pub.L. 85-726, Title A, § 1005, Aug. 23, 1958, 72 Stat. 794; Pub.L. 86-199, Aug. 25, 1959, 73 Stat. 427.

## § 1487. Judicial enforcement; jurisdiction; application; costs

(a) If any person violates any provision of this chapter, or any rule, regulation, requirement, or order thereunder, or any term, condition, or limitation of any certificate or permit issued under this chapter, the Board or Administrator, as the case may be, their duly authorized agents, or, in the case of a violation of section 1371(a) of this title, any party in interest, may apply to the district court of the

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United States, for any district wherein such person carries on his business or wherein the violation occurred, for the enforcement of such provision of this chapter, or of such rule, regulation, requirement, order, term, condition, or limitation; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or other process, mandatory or otherwise, restraining such person, his officers, agents, employees, and representatives, from further violation of such provision of this chapter or of such rule, regulation, requirement, order, term, condition, or limitation, and requiring their obedience thereto.

(b) Upon the request of the Board or Administrator, any district attorney of the United States to whom the Board or Administrator may apply is authorized to institute in the proper court and to prosecute under the direction of the Attorney General all necessary proceedings for the enforcement of the provisions of this chapter or any rule, regulation, requirement, or order thereunder, or any term, condition, or limitation of any certificate or permit, and for the punishment of all violations thereof, and the costs and expenses of such prosecutions shall be paid out of the appropriations for the expenses of the courts of the United States. Pub.L. 85-726 Title X, § 1007, Aug. 23, 1958, 72 Stat. 796.

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- 207.8 Notice of proposed special services.
- 207.9 Records and record retention.
- 207.10 Reports of emergency commercial charters for other direct carriers.
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Subpart B—Provisions Relating to Pro Rata Charters

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- 207.43 Charter costs.
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Subpart C—Provisions Relating to Single Entity Charters

- 207.50 Applicability of subpart.
- 207.51 Terms of service.
- 207.52 Commissions paid to travel agents.
- 207.53 Statement of Supporting Information.

Subpart D—Provisions Relating to Mixed Charters

- 207.60 Applicable rules.

APPENDIX A

AUTHORITY.—Secs. 204, 401, 403, 404(b), 407, 411, 416(b), 72 Stat. 743, 754 (as amended by 76 Stat. 143, 82 Stat. 867), 758 (as amended by 74 Stat. 445), 760, 766, 769, 771; 49 U.S.C. 1324, 1371, 1373, 1374, 1377, 1381, 1386.

SOURCE: ER-802, 38 FR 14157, May 30, 1973, unless otherwise noted.

**PART 207—CHARTER TRIPS AND SPECIAL SERVICES**

Subpart A—General Provisions

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- 207.2 Applicability of part.
- 207.3 Scope of authorization.
- 207.4 Tariffs to be filed for charter trips and special services.
- 207.4a Written contracts with charterers.
- 207.5 Limitation on amount of charter trips which may be performed by combination carriers.
- 207.6 All-cargo carriers: limitation on amount of charter trips which may be performed.
- 207.7 Charter trips and other special services within the State of Alaska.
- 207.7a Restriction on frequency and regularity of off-route charter trips and other special services.



## § 207.1. Definitions.

As used in this part, unless the context otherwise requires:

"All-cargo carrier" means an air carrier holding a certificate of public convenience and necessity issued pursuant to section 401(d) (1) or (2), which authorizes the carriage of property only or property and mail only.

"Base Revenue Plane Miles" means revenue mileage operated by an air carrier in scheduled services, extra sections, and on-route charter trips or special services.

"Charter flight" means air transportation performed in accordance with § 207.11.

"Charter group" means that body of individuals who shall actually participate in the charter flight.

"Charter organization" means that organization, group, or other entity from whose members (and their immediate

"Charter trip" means air transportation performed in accordance with § 207.11.

"Combination carrier" means an air carrier holding a certificate of public convenience and necessity issued pursuant to section 401(d) (1) or (2) which authorizes the carriage of persons, property and mail or persons and property only.

"Hawaiian charter trip" means a charter trip between points within the 48 contiguous States of the United States, on the one hand, and points in the State of Hawaii, on the other hand.

"Islands of the Caribbean" means points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the Virgin Islands, Trinidad and Tobago, the Cayman Islands, Aruba, the Leeward and Windward Islands, Barbados, and Curacao.

"Mixed charter" means a charter, the cost of which is borne, or pursuant to contract may be borne, partly by the charter participants and partly by the charterer.

"Off-route" shall refer to any charter which is not on-route, except (1) charters performed for the Department of Defense, and (2) charters performed in overseas or foreign air transportation on the reverse leg of a charter performed in the opposite direction under a contract with the Department of Defense calling for one-way service.

"On-route" shall refer to service performed by an air carrier between points between which said carrier is authorized to provide service pursuant to either its certificate of public convenience and necessity or exemption authority: *Provided, however*, That passenger charter trips by any all-cargo carrier are not considered to be on-route whether or not they are performed between points designated to receive service by such carrier in its certificate of public convenience and necessity, except that in the event services are performed pursuant to a contract with the Department of Defense or an agency thereof, by an all-cargo carrier between points designated to receive service by such carrier in its certificate of public convenience and necessity which (1) involves cargo transportation in one direction and passenger transportation in the other direction or (2) involves a charter trip in which passengers and cargo are carried on the same flight, the passenger charter leg or the mileage operated in such charter, as the case may be, will be considered on-route.

NOTE: Charter services for the Department of Defense conducted between points between which the carrier is not otherwise authorized to provide service by its certificate of public convenience and necessity or exemption authority naming such points are not regarded as "on-route."

"Point" means any airport or place where an aircraft may be landed or taken off, including the area within a 50-mile radius of such airport or place.

"Pro rata charter" means a charter, the cost of which is divided among the

"Single entity charter" means a charter, the cost of which is borne by the charterer and not by individual passengers, directly or indirectly.

"Special services" are all services rendered in air transportation which are authorized by section 401(e) (6) of the Act by an air carrier holding a certificate of public convenience and necessity other than (1) services rendered in air transportation over the route or routes designated in its certificate(s), (2) charter services as defined in this section, and (3) services authorized by special exemption under section 4.6(b) of the Act.

"Transatlantic charter trip" means a charter trip between points within the 48 contiguous States of the United States, on the one hand, and points in Greenland, Iceland, the Azores, Europe,

Africa, or Asia, as far east as (and including) India, on the other hand: *Provided, however,* That this definition shall not apply to off-route charter trips performed by a carrier between a point within the 48 contiguous States of the United States, on the one hand, and a point in a country in the above area with respect to which the carrier is authorized to perform air transportation of persons and property pursuant to a certificate of public convenience and necessity issued under section 401 of the Act, on the other hand.

"Transpacific charter trip" means a charter trip between points within any State of the United States, on the one hand, and points in Australasia (including Australia, New Zealand, Polynesia, Micronesia, and Melanesia), Indonesia, or Asia as far west as longitude 70° east, on the other hand: *Provided, however,* That this definition shall not apply to off-route charter trips performed by a carrier between a point within any State of the United States, on the one hand, and a point in a country in the above area with respect to which the carrier is authorized to perform air transportation of persons and property pursuant to a certificate of public convenience and necessity issued under section 401 of the Act, on the other hand.

"Travel agent" means any person engaged in the formation of groups for transportation or in the solicitation or sale of transportation services.

#### § 207.2 Applicability of part.

This part shall apply to all air carriers (other than Alaskan air carriers and air carriers certificated for supplemental air service) who hold currently effective certificates of public convenience and necessity issued under section 401 of the act.

#### § 207.3 Scope of authorization.

Off-route charter trips and other special services, and on-route charters, may be performed by air carriers, subject, however, to the limitations and regulations set forth in this part. The limitations and regulations herein specified as applicable to charter trips shall be applicable to all charter trips irrespective of whether the authority to conduct such trips derives from section 401(e)(6) of the act or the carrier's certificate of public convenience and necessity or from a special or general exemption issued by the Board.

#### § 207.4 Tariffs to be filed for charter trips and special services.

(a) No air carrier shall perform any charter trips or other special services unless such air carrier shall have on file with the Board a currently effective tariff showing all rates, fares, and charges for such charter trips and other special services, and showing the rules, regulations, practices, and services in connection with such transportation including the eligibility requirements for charter groups not inconsistent with those established in this part.

(b) Every charter tariff shall contain the following provision: Payments for a charter flight made to any person to whom the carrier, directly or indirectly, has paid a commission or has agreed to pay a commission with respect to such flight, shall be considered payment to the carrier: *Provided, however,* That this requirement shall not be applicable to foreign-originated charters.

#### § 207.4a Written contracts with charterers.

(a) Every agreement to perform a charter trip, except charters for the Department of Defense, shall be in writing and signed by an authorized representative of the air carrier and the charterer prior to operation of a charter flight: *Provided,* That where execution of a contract prior to commencement of flight is impracticable because the charter has been arranged on short notice, compliance with the provision hereof shall be effected within seven (7) days after commencement of the flight. The written agreement shall include, without limitation:

(1) Date and place of execution of the contract or agreement;

(2) Names, addresses, and titles of each signatory, and official position of each;

(3) Dates of flights and points involved;

(4) Type and capacity of aircraft: Number of passenger seats available or pounds of cargo capacity;

(5) Rates, fares, and charges applicable to the charter trip, including the charter price, live and ferry mileage charges, and layover and other nonflight charges; and

(6) The name and address of either the surety whose bond secures advance charter payments received by the carrier or of the carrier's depository bank to which checks or money orders for ad-



charter payments are to be made as escrow holder, pending completion of the charter trip.

(b) A statement that unless the charterer files a claim with the carrier, or the carrier is unavailable, with the surety, within sixty (60) days after the cancellation of a charter trip with respect to which the charterer's advance payments were secured by the bond, the surety shall be released from all liability under the bond to such charterer for such charter trip (see § 207.17(e)).

(c) No term or condition of the charter contract shall, on its face, be inconsistent with any provision of the carrier's published tariff.

12-609, 36 FR 20254, July 30, 1973]

**§ 207.5 Limitation on amount of charter trips which may be performed by combination carriers.**

A combination carrier shall not during any calendar year perform off-route charter trips which in the aggregate, on a revenue plane-mile basis, exceed 2 percent of the base revenue plane-miles flown by it during the preceding calendar year.

**§ 207.6 All-cargo carriers: limitation on amount of charter trips which may be performed.**

(a) [Reserved].

(b) An all-cargo carrier shall not during any calendar year perform off-route charters which in the aggregate, on a revenue plane-mile basis, exceed 2 percent of the base revenue plane-miles flown by it during the preceding calendar year: *Provided, however,* That an all-cargo carrier shall be permitted to perform off-route cargo charters within its area of operations without any limitation as to volume of service.

(c) Within the meaning of paragraph (b) of this section, the areas of operations of the all-cargo carriers are the following:

(1) Within the 48 contiguous States—The Flying Tiger Line Inc.; Airlift International, Inc.; and Seaboard World Airlines, Inc.

(2) Between the 48 contiguous States and Europe—Seaboard World Airlines, Inc.

(3) Between the 48 contiguous States, on the one hand, and the islands of the Caribbean, on the other—Airlift International, Inc.

(4) Between the 48 contiguous States and Asia as far west as longitude 70°

east, including Japan and the Philippines, but not including Indonesia—The Flying Tiger Line Inc.

**§ 207.7 Charter trips and other special services within the State of Alaska.**

An air carrier shall not perform any charter trip or other special service in interstate air commerce within the State of Alaska.

**§ 207.7a Restriction on frequency and regularity of off-route charter trips and other special services.**

No air carrier shall perform off-route Hawaiian, transatlantic or transpacific charter trips, or any other off-route charter trips between any pair of points, or special services between any pair of points:

(a) In excess of a total of eight (8) flights in the same direction during any period of four successive calendar weeks.

(b) In the same direction on the same day of two or more successive calendar weeks.

(c) In excess of a total of three (3) flights in the same direction during any period of two successive calendar weeks unless such period is followed by a break of at least one calendar week during which no flights are operated in such market or between such points.

(d) Which are so arranged as to result in the observance of breaks required by paragraph (c) of this section at regularly recurring intervals, or

(e) Which are so arranged as to result in any uniform pattern or normal consistency of operations:

*Provided,* That the restrictions imposed by this section shall not be applicable to off-route cargo charters performed by an all-cargo carrier within its area of operations as set forth in § 207.6.

**§ 207.8 Notice of proposed special services.**

No air carrier shall perform any special service in interstate, overseas or foreign air transportation unless at the time of filing of a tariff applicable to such special service or at the time of filing of an application for a special tariff permission, such air carrier shall have submitted to the Board a statement setting forth a full description of the proposed service and shall have mailed copies thereof to the air carriers authorized by certificates of public convenience and necessity to render service to any point designated to receive the proposed spe-

cial service The proposed special service shall not be inaugurated if prior to the effective date of the tariff applicable to such special service, or at the time of action on the application for special tariff permission, the Board shall have notified such air carrier that the performance of such special service does not appear to be consistent with the public interest.

§ 207.9 Records and record retention.

Each air carrier shall obtain and retain the following records in accordance with Part 249 of this subchapter:

(a) A record of the names, addresses, and telephone numbers of all passengers transported on each pro rata charter trip.

(b) A copy of every charter contract.

(c) Every statement of information and proof of the commission paid to any travel agent for each pro rata charter trip.

(d) The written confirmation, and accompanying passenger list, received from another carrier pursuant to § 207.25; and a copy of its written request, and accompanying passenger list, to such other carrier for such confirmation.

§ 207.10 Reports of emergency commercial charters for other direct carriers.

It shall be an express condition upon authority conferred by subparagraph

(1) of paragraph (b) of § 207.11 that each air carrier which performs an emergency charter transporting commercial traffic for another direct carrier shall file a report with the Bureau of Operating Rights, within 30 days following each charter trip, containing the following information:

(a) Name of direct carrier performing the charter and name of direct carrier for which the charter was performed;

(b) Date of flight or flights;

(c) Points of origin and destination, and intermediate points, in any;

(d) Number of passengers and/or tons of cargo transported;

(e) Description of circumstances creating the emergency;

(f) Date of initial contact by the chartering carrier regarding the charter;

(g) Reasons why the traffic in question was not or could not be carried by other carriers certificated to serve the particular market.

§ 207.11 Charter flight limitations.

Charter flights (trips) in air transportation shall be limited to the following:

(a) Air transportation of persons and/or property pursuant to contracts with the Department of Defense where the entire capacity of one or more aircraft has been engaged by the Department;

(b) Air transportation performed on a time, mileage, or trip basis where the entire capacity of one or more aircraft has been engaged for the movement of persons and their baggage and/or the movement of property;

(1) By a person for his own use (including a direct air carrier or a direct foreign air carrier when such aircraft is engaged solely for the transportation of company personnel or company property,

or in case of emergency commercial traffic: *Provided*, That emergency charters for commercial traffic shall be reported in accordance with § 207.10);

(2) By a person (no part of whose business is the formation of groups or the consolidation of shipments for transportation or the solicitation or sale of transportation services) for the transportation of a group of persons, as agent or representative of such group;

(3) By an air freight forwarder or international air freight forwarder holding a currently effective operating authorization under Part 296 or Part 297 of this subchapter for the carriage of property in air transportation; by a person authorized by the Board to transport by air used household goods of the Department of Defense; or, with respect to flights from the United States in foreign air transportation, by a foreign air freight forwarder holding a currently effective foreign air carrier permit issued by the Board under section 402 of the Act, and, with respect to flights to the United States in foreign air transportation, by any foreign air freight forwarder who has complied with the provisions of § 297.23 of this chapter;

(4) [Reserved]

(5) By a study group charterer or a foreign study group charterer as defined in Part 373 of this chapter; or

(6) By an overseas military personnel charter operator as defined in Part 372 of this chapter; or

(7) By a travel group charter organizer on behalf of a travel group pursuant to Part 372a of this chapter; or

(8) By a tour operator or a foreign tour operator as defined in Part 378 of this chapter; or



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(c) Air transportation performed on a mileage or trip basis where less than the entire capacity of an aircraft has been engaged for the movement of persons and their personal baggage by one or more of the following persons: *Provided*, That such persons in the aggregate engage the entire capacity of the aircraft:

(1) By a person for his own use (including a direct air carrier or a direct foreign air carrier when such aircraft is engaged solely for the transportation of company personnel and their personal baggage, or in cases of emergency, of commercial passenger traffic: *Provided*, That emergency charters for commercial traffic shall be reported in accordance with § 207.10);

(2) By a person (no part of whose business is the formation of groups or consolidation of shipments for transportation or the solicitation or sale of transportation services), for the transportation of a group of persons as agent or representative of such group;

(3) By a study group charterer or foreign study group charterer as defined in Part 373 of this chapter;

(4) By an overseas military personnel carrier operator as defined in Part 372 of this chapter;

(5) By a travel group charter organization on behalf of a travel group pursuant to Part 372a of this chapter;

(6) By a tour operator or foreign tour operator as defined in Part 378 of this chapter;

*Provided*, That with respect to paragraph (c) of this section each foreign charterer shall engage the entire capacity of an aircraft; shall contract and pay for 40 or more seats:

*And provided further*, That paragraph (c) of this section shall not be construed to apply to movements of property.

101(3), 416(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 737 (as amended by 75 Stat. 467, 84 Stat. 921), 743, 744, 766; 49 U.S.C. 1301) [ER-802, 38 FR 14157, May 30, 1973, as amended by ER-806, 38 FR 19678, July 23, 1973; ER-815, 38 FR 17724, Aug. 24, 1973]

### § 207.12 Unused space.

An air carrier may, with the written consent of the charterer(s), utilize any unused space for the transportation of (a) the carrier's own personnel and property and/or (b) the directors, officers, and employees of a foreign air carrier

or another air carrier traveling pursuant to a pass interchange arrangement.

### § 207.13 Terms of service.

(a) The total charter price and other terms of service rendered pursuant to this part shall conform to those set forth in the applicable tariff on file with the Board and in force at the time of the respective charter flight and the contract must be for the entire capacity, or for less than the entire capacity (see § 207.11(c)) of one or more aircraft. Where a carrier's charter charge computed according to a mileage tariff includes a charge for ferry mileage, the carrier shall refund to the charterer any sum charged for ferry mileage which is not in fact flown in the performance of the charter: *Provided*, That the carrier shall not charge the charterer for ferry mileage flown in addition to that stated in the contract unless such mileage is flown for the convenience of and at the express direction of the charterer.

(b) The carrier shall require full payment of the total charter price, including payment for the return portion of a round trip, or the posting of a satisfactory bond for full payment, prior to the commencement of any portion of the air transportation: *Provided, however*, That in the case of a charter for less than the entire capacity of an aircraft pursuant to § 207.11(c), the carrier shall require full payment of the total charter price, including payment for the return portion of a round trip, not less than 30 days prior to the commencement of any portion of the transportation, and such payment shall be refundable unless the charter is canceled by the carrier or unless the carrier accepts a substitute charterer for one which has canceled a charter, in which case the amount paid by the latter shall be refunded. For the purpose of this paragraph payment to the carrier's depository bank, as designated in the charter contract, shall be deemed payment to the carrier.

[ER-802, 38 FR 14157, May 30, 1973, as amended by ER-809, 38 FR 20254, July 30, 1973]

(c) Where four or more round trip flights per calendar year are conducted on behalf of a chartering organization by a carrier or carriers, one-way passengers shall not be carried except that up to 5 percent of the charter group may be transported one way in each direction, there shall be no intermingling of pas-

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sengers and each planeload group, or less than planeload group (see § 207.11 (c)), shall move as a unit in both directions, except as provided in § 207.14. This provision shall not be construed as permitting knowing participation in any plan whereby each leg of a round trip is chartered separately in order to avoid the 5-percent limitation aforesaid.

§ 207.14 Substitute transportation in emergencies.

(a) A carrier shall be permitted to transport a passenger on a charter flight with a group other than his own or on a ferry flight (as defined in § 241.03 of this subchapter) under the following circumstances:

(1) The passenger was transported by the carrier on an outbound charter flight;

(2) The transportation is for return passage only;

(3) When the passenger is required to return at a different time than his own charter flight due to emergency circumstances beyond the passenger's control; and

(4) The charter group with which the passenger is to travel expresses no objection to his participation in the charter flight.

For the purposes of this paragraph, "emergency circumstances beyond the passenger's control" shall mean illness or injury to the passenger or a member of his immediate family; death of a member of the passenger's immediate family; or weather conditions or unforeseeable and unavoidable delays in transportation.

(b) In cases where such substitute transportation is furnished, the carrier shall file a report with the Director, Bureau of Operating Rights, within 30 days after the substitute transportation is provided setting forth the circumstances of the carriage. Such report shall include the name of the passenger; the name of his chartering organization; the name of the chartering organization with whom he traveled in substitute transportation; the date he was originally scheduled to return and the date on which he actually returned; a description of the circumstances which made the substitute transportation necessary; and the evidence which the carrier obtained to substantiate the need for substitute transportation (e.g., a doctor's certificate).

§ 207.15 Payments, gratuities, and donations.

(a) Neither a carrier nor a travel agent shall make any payments or extend gratuities of any kind, directly or indirectly, to any member of a chartering organization in relation either to air transportation or land tours or otherwise.

(b) Neither a carrier nor a travel agent shall make any donation to a chartering organization or an individual charter participant.

(c) Nothing in this section shall preclude a carrier from paying a commission (within the limits of §§ 207.23 and 207.52) to a member of a chartering organization if such member is its agent, or restrict a carrier or a travel agent from offering to each member of the charter group such advertising and

extended to individually ticketed passengers (e.g., canvas traveling bag or a money exchange computer).

§ 207.16 Waiver.

(a) A waiver of any of the provisions of this part may be granted by the Board upon the submission by an air carrier of a written request therefor not less than 30 days prior to the flight to which it relates provided such a waiver is in the public interest and it appears to the Board that special or unusual circumstances warrant a departure from the provisions set forth herein. Notwithstanding the foregoing, waiver applications filed less than 30 days prior to a flight may be accepted by the Board in emergency situations in which the circumstances warranting a waiver did not exist 30 days before the flight.

(b) A request for a waiver of any of the provisions of § 207.25 shall be accompanied by a list of the names, addresses, and telephone numbers of all the passengers on the flight to which the request relates.

§ 207.17 Protection of customers' deposits.

(a) Except as provided in paragraph (c) of this section, no air carrier shall perform any charter trip (over than a cargo charter trip) originating in the United States or any overseas military personnel charter trip, as defined in Part 372 of this chapter, nor shall such air carrier accept any advance payment in connection with any such charter trip,



unless there is on file with the Board a copy of a currently effective agreement made between said carrier and a designated bank, by the terms of which all sums payable in advance to the carrier by charterers, in connection with such charter trip to be performed by said carrier, shall be deposited with and maintained by the bank, as escrow holder, the agreement to be subject to the following conditions:

(1) The charterer (or its agent) shall pay the carrier either by check or money order made payable to the depository bank. Such check or money order and any cash received by the carrier from a charterer (or his agent) shall be deposited in, or mailed to, the bank no later than the close of the business day following the receipt of the check or money order or the cash, along with a statement showing the name and address of the

That where the charter transportation to be performed by a carrier is sold through a travel agent, the agent may be authorized by the carrier to deduct his commission and remit the balance of the advance payment to the carrier either by check or money order made payable to the designated bank.

(2) The bank shall pay over to the carrier escrowed funds with respect to a specific charter only after the carrier has certified in writing to the bank that such charter has been completed: *Provided, however,* That the bank may be required by the terms of the agreement to pay over to the carrier, upon the latter's written certification that the outbound segment of a round-trip charter has been completed, a specified portion of such escrowed funds representing the amount of the charter price allocable to such segment.

(3) Refunds to a charterer from sums in the escrow account shall be paid directly to such charterer or its assigns. Upon written certification from the carrier that a charter has been canceled, the bank shall turn over directly to the charterer or its assigns all escrowed sums (less any cancellation penalties, as provided in the charter contract) which the bank holds with respect to such canceled charter: *Provided, however,* That, in the case of a charter for less than the entire capacity of an aircraft (see § 207.11(c)) escrowed funds shall be turned over to a charterer or its assigns only if the carrier's written cer-

tification of cancellation of such charter includes a specific representation that either the charter has been canceled by the carrier or, if the charter has been canceled by the charterer, that the carrier has accepted a substitute charterer.

(4) The bank shall maintain a separate accounting for each charter flight.

(5) As used in this section the term "bank" means a bank, savings and loan institution, or other financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(b) The escrow agreement required under paragraph (a) shall not be effective until approved by the Board. Claims against the escrow may be made only with respect to nonperformance of air transportation.

(c) The carrier may elect, in lieu of furnishing an escrow agreement pursuant to paragraph (a) of this section, to furnish and file with the Board a surety bond which guarantees to the United States Government the performance of all charter trips (other than cargo charter trips) originating in the United States and of all overseas military personnel charter trips, as defined in Part 372 of this chapter, to be performed in whole or in part by the carrier pursuant to any contract entered into by such carrier after the execution date of the bond. The amount of such bond shall be unlimited. Claims under the bond may be made only with respect to the nonperformance of air transportation.

(d) The bond permitted by paragraph (c) of this section shall be in the form set forth as Appendix A to this part. Such bond shall be issued by a bonding or surety company (1) whose surety bonds are accepted by the Interstate Commerce Commission under 49 CFR 1034.6; or (2) which is listed in Best's Insurance Reports (Fire and Casualty) with a general policyholder's rating of "A" or better. The bonding or surety company shall be one legally authorized to issue bonds of that type in the State in which the carrier is incorporated or in which it maintains its principal place of business. For the purposes of this section, the term "State" includes any territory or possession of the United States, or the District of Columbia. If the bond does not comply with the requirements of this section, or for any reason fails to provide satisfactory or adequate protection for the public, the Board will

notify the route air carrier, by registered or certified mail, stating the deficiencies of the bond. Unless such deficiencies are corrected within the time limit set forth in the notification, no amounts payable in advance by customers for the subject charter trips shall be accepted by the carrier.

(e) The bond required by this section shall provide that unless the charterer files a claim with the carrier, or, if he is unavailable, with the surety, within sixty (60) days after cancellation of a charter trip with respect to which the charterer's advance payments are secured by the bond, the surety shall be released from all liability under the bond to such charterer for such charter trip. The contract between the carrier and the charterer shall contain notice of this provision.

[ER-809, 38 FR 20254, July 30, 1973]

§ 207.18 Reporting requirements.

In connection with the provisions of § 207.17(a), the following quarterly reports shall be filed with the Board's Bureau of Operating Rights not later than the 10th day of the month succeeding the reporting period: (a) By the depository bank, showing separately for each charter flight identified by departure date, the total amount of deposits received and disbursed during the reporting period, and the balance in the depository account at the end of the reporting period; and (b) by the air carrier, showing the number of charter flights performed and the amount of payment received for such flights from the depository bank during the reporting period. The reports shall be certified by an officer in charge of the bank's or the air carrier's accounts, as the case may be, and the certification shall be in the following form:

CERTIFICATION:

I, the undersigned \_\_\_\_\_  
(Title of officer in charge of accounts)  
of the \_\_\_\_\_ do  
(Full name of reporting company)  
certify that this report and all supporting documents which are submitted herewith, filed for the above indicated period, have

\* Title 18 U.S.C. Sec. 1001, Crimes and Criminal Procedure, makes it a criminal offense, subject to a maximum fine of \$10,000 or imprisonment for not more than 5 years or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within the jurisdiction of any agency of the United States.

been prepared by me or under my direction that I have carefully examined them and declare that, to the best of my knowledge and belief, the information contained therein is complete and accurate.

(Signature)

(Bank or carrier's post office address)

Date \_\_\_\_\_, 19\_\_\_\_

[ER-809, 38 FR 20255, July 30, 1973]

Subpart B—Provisions Relating to Pro Rata Charters

§ 207.20 Applicability of subpart.

This subpart sets forth the special rules applicable to pro rata charters, both on-route and off-route.

REQUIREMENTS RELATING TO AIR CARRIER

§ 207.21 Solicitation and formation of a chartering group.

(a) A carrier shall not engage, directly or indirectly, in any solicitation of individuals (through personal contact, advertising, or otherwise) as distinguished from the solicitation of an organization for a charter trip, except after a charter contract has been signed.

(b) A carrier shall not employ, directly or indirectly, any person for the purpose of organizing and assembling members of any organization, club, or other entity into a group to make the charter flight, except after a charter contract has been signed.

§ 207.22 Pretrip notification and charter contract.

(a) Upon a charter flight date being reserved by the carrier or the charterer, the carrier shall provide the prospective charterer with a copy of this Part 207. The charter contract shall include a provision that the charterer, and any agent thereof, shall only act with regard to the charter in a manner consistent with this part and that the charterer shall within due time submit to the carrier such information as specified in § 207.45. The carrier shall also require that the charterer and any travel agent involved shall furnish it at least 30 days prior to departure of the first flight the statements of supporting information required in

\* Copies of this part are available by purchase from the Superintendent of Documents, Washington, D.C. 20402. Single copies will be furnished without charge on written requests to the Publications Services Section, Civil Aeronautics Board, Washington, D.C. 20428.



§ 207.47 and 207.31, respectively, unless the charter has been contracted for within 30 days before the date of departure in which event the statement and attachments shall be filed with the carrier on the date the charter contract is executed. In the event of a substitution of carriers, the carrier with whom the statements and attachments have been filed may forward them to the substitute carrier, in which case new statements need not be executed.

(b) The carrier shall attach to its copy of the charter contract a certification by an officer of the chartering organization, or other qualified person, authorizing the person who executes the contract to do so on behalf of the chartering organization. If the carrier executes a charter contract within 15 days of the flight date, the carrier shall require the person who executes the contract on behalf of the charterer to certify as to whether or not a contract for the flight has been canceled by another carrier because the chartering organization was found to be ineligible under the regulations. The carrier shall also notify the Board within 5 days after the contract has been executed, that its execution took place within 15 days of flight date. Where the certification discloses, or the carrier has reason to believe, that a contract for the flight has been canceled by another carrier, the notification to the Board shall also state that the carrier has made an independent inquiry and has satisfied itself that such cancellation was not caused by the ineligibility of the chartering organization. If a charter contract is for the return flight of a one-way charter by the same charter organization, a copy of the passenger list (§ 207.45) of the outbound charter shall be attached to the charter contract.

#### § 207.23 Agent's commission.

The carrier shall not pay its agent a commission or any other benefits, directly or indirectly, in excess of 5 percent of the total charter price as set forth in the carrier's charter tariff on file with the Board, or more than the commission related to charter flights paid to an agent by a carrier certificated to render regular service on the same route, whichever is greater. The carrier shall not pay any commission whatsoever

to an agent if the agent receives a commission from the charterer for the same service.

#### § 207.24 Statement of Supporting Information.

Prior to performing a charter flight, the carrier shall execute, and require the travel agent (if any) and the charterer to execute, the Statement of Supporting Information attached hereto and made a part hereof. If a charter contract covers more than one charter flight, only one statement need be filed: *Provided, however,* That separate financial data (see item 13 of statement) shall be filed for each one-way or round-trip flight. The carrier shall require the charterer to annex to the statement copies of all announcements of the chartering organization with the charter issued after the contract is signed.

#### § 207.25 Charter trips originating in the United States.

(a) In the case of a charter trip originating in the United States which includes foreign air transportation, and where separate charter contracts cover the flight departing from the United States and the flight returning to the United States, the time by which the carrier to perform the returning flight, as well as the carrier to perform the departing flight, must receive full payment of its charter price (or a satisfactory bond for such payment), in compliance with the requirements of § 207.13(b). The carrier shall file such payment 15 days prior to the departing flight, for a plane-load charter, or not less than 30 days prior to the departing flight, if the charter is for less than the entire capacity of an aircraft, pursuant to § 207.11(c).

(b) In addition to requiring timely payment of its charter price (or the posting of a bond), pursuant to paragraph (a) of this section, the carrier performing the departing flight from the United States shall request in writing from the carrier performing the returning flight for the same chartering group, and the carrier performing the returning flight shall furnish, not later than 15 days prior to the scheduled departure of a plane-load charter, or not later than 30 days prior to the scheduled departure of a less-than-plane-load charter, written confirmation that the latter carrier has also received timely payment of its charter price (or the posting of a bond), pursuant to paragraph (a) of this sec-

\* Not applicable where the charter is based on employment in one entity or employee or student status at a school.

tion. Both the request and the confirmation shall contain particulars sufficient to identify the charter trip, including such details as the date and point of origin of the departing flight, the date and point of origin of the returning flight, and the name of the chartering group; and both shall be accompanied by a passenger list. The confirmation shall also contain a statement to the effect that the carrier has not previously furnished such confirmation to any other carrier with respect to the same charter trip.

(c) The requirements of this section shall apply to all charter flights scheduled to depart after the effective date hereof: *Provided, however*, That with respect to planeload charter flights scheduled to depart less than 15 days after the effective date hereof, and with respect to less-than-planeload charter flights scheduled to depart less than 30 days after the effective date hereof, requirements hereunder as to advance payments and receipt of written confirmation thereof by the departing carrier, need not be met within the time specified in this section but may be met at any time before flight departure.

(d) Every carrier which has entered into a charter contract covering one-way foreign air transportation from the United States, to be performed in connection with a pro rata charter trip originating in the United States, must obtain, before performing such departing flight, either written confirmation from the returning carrier (as provided in paragraph (b) or (c) of this section, as the case may be), or a waiver granted by the Board pursuant to § 207.16, such waiver to be based either on the grounds set forth in said § 207.16, or on a showing that the arrangements between the chartering organization and the charter participants do not involve the provision of return transportation to the United States.

(e) For the purpose of this section, payment to the carrier's depository bank as designated in the charter contract, shall be deemed payment to the carrier.

**NOTE:** The reporting requirements herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

[ER-802, 38 FR 14157, May 30, 1973, as amended by ER-809, 38 FR 20255, July 30, 1973]

§ 207.26 Air carrier to identify enplanements.

The air carrier shall make reasonable efforts to verify the identity of all enplaning charter participants, and the documentary source of such verification shall be noted on the passenger list: *Provided however*, That in the case of international flights the identity of each enplaning charter participant shall be verified by means of his passport or if there be none, by means of any other travel identity document, and the passport number or travel identity document number shall be entered on the passenger list.

REQUIREMENTS RELATING TO TRAVEL AGENTS

§ 207.30 Prohibition against double compensation.

A travel agent may not receive a commission from both the direct air carrier and the charterer for the same service.

§ 207.31 Statement of Supporting Information.

Travel agents shall execute, and furnish to air carriers, section A of part II of the Statement of Supporting Information attached hereto and made a part hereof, at such time as required by the carrier to afford it due time for review thereof.

REQUIREMENTS RELATING TO CHARTERING ORGANIZATION

§ 207.40 Solicitation of charter participants.

(a) As used in the section, "solicitation of the general public" means:

(1) A solicitation going beyond the bona fide members of an organization (and their immediate families). This includes air transportation services offered by an air carrier under circumstances in which the services are advertised in mass media, whether or not the advertisement is addressed to members of a specific organization, and regardless of who places or pays for the advertising. Mass media shall be deemed to include radio and television, and newspapers and magazines. Advertising in such media as newsletters or periodicals of membership organizations, industrial plant newsletters, college radio stations, and college newspapers shall not be considered advertising in mass media to the extent that:

(i) The advertising is placed in a medium of communication circulated



mainly to members of an organization that would be eligible to obtain charter service, and

(b) The advertising states that the charter is open only to members of the organization referred to in subdivision (1) of this subparagraph, or only to members of a subgroup thereof. In this context, a subgroup shall be any group with membership drawn primarily from members of the organization referred to in subdivision (1) of this subparagraph: *Provided*, That this paragraph shall not be construed as prohibiting air carrier advertising which offers charter services to bona fide organizations, without reference to a particular organization or flight.

(2) The solicitation, without limitation, of the members of an organization so constituted as to ease of admission to membership, and nature of membership, as to be in substance more in the nature of a segment of the public than a private entity.

be solicited only from among the bona fide members of an organization, club, or other entity, and their immediate families, and may not be brought together by means of a solicitation of the general public. "Bona fide members" means those members of a charter organization who (1) have not joined the organization merely to participate in the charter as the result of solicitation of the general public; and (2) are members for a minimum of 6 months prior to the starting flight date. The requirement in subparagraph (2) of this paragraph is not applicable to—

(i) Students and employees of a single school, and immediate families thereof; or

(ii) Employees of a single Government agency, industrial plant, or mercantile establishment, and immediate families thereof.

(c) Solicitation of, as well as participation by, members of an organization with respect to charter flights shall extend only to the organization, or the particular chapter or unit thereof, which signs the charter agreement with the air carrier as the charterer.

(d) A charterer shall not advertise or otherwise solicit its members for any charter until a charter contract has been signed: *Provided, however*, That this prohibition shall not extend to oral inquiries or internal mailings directed to members to determine interest in a

charter flight or charter program so long as no fixed price for air transportation is held out. After a charter contract is signed, copies of solicitation material shall be furnished the carrier at the same time it is distributed to members.

#### § 207.41 Passengers on charter flights.

Only bona fide members of the charterer, and their immediate families, may participate as passengers on a charter flight, and the participants must be members of the specific organization or chapter which authorized the charter. The charterer must maintain a central membership list, available for inspection by the carrier or Board representative, which shows the date each person became a member.\* Where four or more round-trip flights per calendar year are conducted on behalf of a chartering organization by a carrier or carriers, intermingling between flights or reforming of planeload groups, or less than planeload groups (see § 207.11(c)), shall move as a unit in both directions, except as provided in § 207.14.

#### § 207.42 Participation of immediate families in charter flights.

(a) The immediate family of any bona fide member of a charter organization may participate in a charter flight.

(b) "Immediate family" means only the following persons who are living in the household of a member of a charter organization, namely, the spouse, dependent children, and parents, or such member.

#### § 207.43 Charter costs.

(a) The costs of charter flights shall be prorated equally among all charter passengers, and no charter passenger shall be allowed free transportation; except that (1) children under 12 years of age may be transported at a charge less than the equally prorated charge; and (2) children under 2 years of age may be transported free of charge.

(b) The charterer shall not make charges to the charter participants which exceed the actual costs incurred in consummating the charter arrangements, nor include as a part of the assessment for the charter flight any charge for

\* Where the charter is based on employment in one entity or student or employee status at a school, records of the corporation, agency or school will suffice to meet the requirements.

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purposes of charitable donations. All charges related to the charter flight arrangements collected from the charter participants which exceed the actual costs thereof shall be refunded to the participants in the same ratio as the charges were collected.

(c) Reasonable administrative costs of organizing the charter may be divided among the charter participants. Such costs may include a reasonable charge for compensation to members of the charter organization for actual labor and personal expenses incurred by them. Such charge shall not exceed \$300 (or \$500 where the charter participants number more than 80) per round-trip flight. Neither the organizers of the charter, nor any member of the chartering organization, may receive any gratuities or compensation, direct or indirect from the carrier, the travel agent, or any organization which provides any service to the chartering organization whether of an air transportation nature or otherwise. Nothing in this section shall preclude a member of a chartering organization who is the carrier's agent from receiving a commission from the carrier (within the limits of § 207.23), or prevent any member of the charter group from accepting such advertising and goodwill items as are customarily extended to individually ticketed passengers (e.g., a canvas traveling bag or a money exchange computer).

(d) If the total expenditures, including among other items compensation to members of the chartering organization, referred to in paragraph (c) of this section, but exclusive of expenses for air transportation or land tours, exceed \$750 per round-trip flight, such expenditures shall be supported by properly authenticated vouchers.

§ 207.44 Statement of charges.

The chartering organization, in any announcements or statements to prospective charter participants giving price per seat, shall state that the seat price is a pro rata share of total charter cost and is subject to increase or decrease depending on the number of participants. All announcements shall separately state the cost of ground arrangements, if any, the cost of air transportation, the administrative expenses of the charterer, and the total cost of the entire trip. All announcements shall also identify the carrier, the number of seats available

and the type of aircraft to be used for the charter.

§ 207.45 Passenger lists.

(a) Prior to each one-way or round-trip flight, a list shall be filed by the charterer with the air carrier showing the names, addresses, and telephone numbers of the persons to be transported, including standbys who may be transported, specifying the relationship of each such person to the charterer (by designating opposite his name one of the three relationship categories hereinafter described), the date the person joined or last renewed a lapsed membership in the charter organization, and the designation "one-way" in the case of one-way passengers. The list shall be amended if passengers are added or dropped before flight.

(b) The relationship of a prospective passenger shall be classified under one of the following categories and specified on the passenger list as follows:

(1) A bona fide member of the chartering organization who will have been a bona fide member of the chartering organization for at least 6 months prior to the starting flight date. Specify on the passenger list as "(1) member."

(2) The spouse, dependent child or parent of a bona fide member who lives in such member's household. Specify on the passenger list as "(2) spouse" or "(2) dependent child" or "(2) parent." Also give name and address of member relative where such member is not a prospective passenger.

(3) Bona fide members of entities consisting only of persons employed by a single Government agency, industrial plant, or mercantile company, and employees of a school or persons whose proposed participation in the charter flight was permitted by the Board pursuant to request for waiver. Specify on the passenger lists as "(3) special" or "(3) member" (where participants are from a school group or from a Government agency, industrial plant or mercantile company).

(c) In the case of a round-trip flight, the above information must be shown for each leg of the flight and any variations between the outbound and inbound trips must be explained on the list.

(d) Attached to such list must be a certification, signed by a duly authorized representative of the charterer, reading:

The attached list of persons includes every individual who may participate in the char-



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on flight. Every person as identified on the attached list (1) is a bona fide member of the chartering organization, and will have been a member for at least 6 months prior to the starting flight date, or (2) is a bona fide member of an entity consisting of (a) students and employees of a single school, or (b) employees of a single Government agency, industrial plant, or mercantile establishment, or (3) is a person whose participation has been specifically permitted by the Civil Aeronautics Board, or (4) is the spouse, dependent child, or parent of a person described hereinbefore and lives in such person's household.

(Signature)

### § 207.46 Application for a charter.

A chartering organization shall make written application to the air carrier, setting forth the number of seats desired, points to be included in the proposed flight or flights, and the dates of departure for each one-way or round-trip flight, and the number of round-trip flights which have been conducted for the organization by any carrier or carriers during the calendar year.

### § 207.47 Statement of Supporting Information.

Charterers shall execute and file with the air carrier section B of part II of the Statement of Supporting Information attached hereto and made a part hereof at such time as required by the carrier to afford it due time for review thereof.

#### Subpart C—Provisions Relating to Single Entity Charters

### § 207.50 Applicability of subpart.

This subpart sets forth the special rules applicable to single entity charters.

### § 207.51 Terms of service.

The provisions of § 207.13 shall apply to charters under this subpart except that paragraphs (b) and (c) of such section shall not be applicable and the sec-

\*Whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than 5 years, or both. Title 18, U.S.C., section 1001.

ond sentence of paragraph (a) of such section shall not be applicable.

### § 207.52 Commissions paid to travel agents.

No direct air carrier shall pay a travel agent any commission in excess of 5 percent of the total charter price or more than the commission related to charter flights paid to an agent by a carrier certificated to fly the same route, whichever is greater.

### § 207.53 Statement of Supporting Information.

Part I of the statement of supporting information attached hereto shall be applicable in the case of single entity charters.

#### Subpart D—Provisions Relating to Mixed Charters

### § 207.60 Applicable rules.

The rules set forth in Subpart B of this part shall apply in the case of mixed charters.

#### STATEMENT OF SUPPORTING INFORMATION<sup>1</sup>

Part I—To be completed by air carrier for each single entity, mixed, or pro rata charter. (Where more than one round-trip flight is to be performed under the charter contract, clearly indicate applicability of answers.)

1. Name of transporting carrier: \_\_\_\_\_

2. Commencement date(s) of proposed flight(s): \_\_\_\_\_

(a) Going: \_\_\_\_\_

(b) Returning: \_\_\_\_\_

3. Points to be included in proposed flight(s): \_\_\_\_\_

(a) From: \_\_\_\_\_ to: \_\_\_\_\_

(b) Returning from: \_\_\_\_\_ to: \_\_\_\_\_

(c) Other stops required by charterer: \_\_\_\_\_

4. (a) Type of aircraft to be used: \_\_\_\_\_

(b) Seating capacity: \_\_\_\_\_

(c) Number of persons to be transported: \_\_\_\_\_

5. (a) Total charter price: \_\_\_\_\_

(b) Does the charter price conform to tariff on file with the Board? \_\_\_\_\_

(c) If pro rata or mixed charter, explain construction of charter price in relation to tariff on file with the Board. (In case of mileage tariff, show mileage for each seg-

<sup>1</sup> This must be retained by the air carrier for 2 years pursuant to the requirements of Part 249, but open to Board inspection, and to be filed with the Board on demand.

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ment involved and indicate whether segment  
is live or ferry.) -----

6. (a) Has the carrier paid, or does it contemplate payment of any commissions, direct or indirect, in connection with the proposed flight? Yes [ ] No [ ]

(b) If "recipients" give names and addresses of such recipients and indicate the amount paid or payable to each recipient. If any commission to a travel agent exceeds 5 percent of the total charter price, attach a statement justifying the higher amount under this regulation.

7. (a) Will the carrier or any affiliate provide any services or perform any functions in addition to the actual air transportation? Yes ☐ No ☐ the services or functions:

(b) If "yes" describe services or functions:

8. Name and address of charterer:

9. If charter is single entity, indicate purpose of flight: -----

10 On what date was the execution executed?

11. If the charter is pro rata, has a copy of Part 207 of the Civil Aeronautics Board's Economic Regulations been mailed to or delivered to the prospective charterer?

Yes ☐ No ☐ \_\_\_\_\_

Part II—To be completed for pro rata or mixed charters only.

Section A—To be supplied by travel agent, or where none, by the air carrier or an affiliate under its control where either of the latter performs or provides any travel agency function or service (excluding air transportation sales but including land tour arrangements).

1. What specific services have been or will be provided by agent to charterer on a group basis? -----

be provided by agent to individual participants in the proposed charter? -----

3. Has the agent or, to his knowledge, have any of his principals, officers, directors, associates or employees compensated any members of the chartering organization in relation either to the proposed charter flight or any land tour? Yes [ ] No [ ]

4. Does the agent have any financial interest in any organization rendering services to the chartering organization? Yes [ ] No [ ]  
No [ ] If answer is "yes" explain:

## WARRANTY

I, \_\_\_\_\_ represent and  
(Name)

warrant that I have acted with regard to this charter operation (except to the extent fully and specifically explained in Part II, Section A) and will act with regard to such operation in a manner consistent with Part 207 of the Board's economic regulations.

(Date) (Signature and address of travel agent or, if none, of authorized official of air carrier where such carrier or an affiliate under its control performs any travel agency function or service (excluding air transportation sales but including land tour arrangements).)

Section B—To be supplied by charterer:

1. Description of chartering organization, including its objectives and purposes:

2. What activities are sponsored by the chartering organization?

3. When was the organization founded?

4. Qualification or requirements for membership in organization and membership fee, if any: -----

5. Has there been any reference to prospective charter flights in soliciting new members for the charter organization? Yes [ ] No [ ]

\* Any air carrier, or any officer, agent, employee, or representative thereof, who shall, knowingly and willfully, fail or refuse • • • to keep or preserve accounts, records, and memoranda in the form and manner prescribed or approved by the Board • • •, or shall, knowingly and willfully, falsify, mutilate, or alter any such account, record, or memorandum • • • shall be deemed guilty of a misdemeanor and, upon conviction thereof, be subject for each offense to a fine of not less than \$100 and not more than \$5,000. Title 49 U.S.C. § 1472(e).

Whoever, in any manner within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than 5 years, or both. Title 18, U.S.C., § 1001.



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6. State where a list of members is available for inspection.

7. Attach list of prospective passengers including "standbys" and one-way passengers designated as such), showing for each: (a) Name and address; (b) relationship of each person to chartering organization, i.e., member, spouse, dependent child, parent or "special" (a person whose proposed participation in the charter flight was permitted by the Board pursuant to request for waiver); (c) if such person is related to a member who is not a prospective passenger, the member's name and address; and (d) date member joined or last renewed a lapsed membership.

8. Attach a list of prospective passengers and does not necessarily have to represent the passengers actually to be carried. The list is to be amended, if passengers are dropped or added before flights and the certification required by § 207.45 must be attached to the list.)

9. What are requirements for participation in charter?

10. How were prospective participants for charter solicited (attach any solicitation material)?

11. Will there be any participants in the charter flight other than (1) members of the chartering organization or (2) spouse, dependent children, and parents of a member of the chartering group residing in the same household?

12. Will there be any members of the chartering organization participating in the charter who will have been members of the organization for a period of less than 6 months prior to flight date? Yes [ ] No [ ] If answer is "yes", give names of participants who will not have been members for 6 months:

13. If there is any intermediary involved in the charter, other than the travel agent whose participation is described in Part II, Section A, submit name, address, remuneration, and scope of activity:

\* Not applicable to school charters, nor to charters limited to employees of a single Government agency, industrial plant, or mercantile company.

13. Estimated receipts:

(Pro rata charge) X (Number of passengers) = (Estimated receipts from charter)

Estimated receipts from other sources, if any: Explain:

(a) Total receipts: \$----- Estimated expenditures, including air charter (separately itemize air transportation, land tour, and administrative expenses):

Item	Amount	Payable to

(b) Total expenditures: \$----- Explain any difference between (a) and (b):

14. Are any of the expenses included in Item 13 above, to be paid to any members of the chartering organization? Yes [ ] No [ ] If "yes" state how much, to whom and for what services:

15. Is any member of the chartering organization to receive any compensation or benefit directly or indirectly from the air carrier, the travel agent, or any organization providing services in relation to the air or land portion of the trip? Yes [ ] No [ ] If "yes" explain fully:

16. Will any person in the group (except children under 2 years) be transported without charge? Yes [ ] No [ ]

17. Will charter costs be divided equally among charter participants, except to the extent that a lesser charge is made for children under 12 years old? Yes [ ] No [ ]

18. Separately state for the outbound and inbound flights the number of one-way passengers anticipated to be transported in each direction:

19. If four or more round trips are contracted for, will each group move as a unit in both directions? Yes [ ] No [ ]

20. If charters have been performed for organization during past 5 years, give dates and name of carrier performing charters:

21. Has a copy of Part 207 "Charter Trips and Special Services" of the Economic Regu-

lations of the Civil Aeronautics Board been received by the charterer? Yes [ ] No [ ]

22. Attach copies of all announcements of the chartering organization in connection with the charter issued after the charter contract is signed.

**WARRANTY OF CHARTERER**

I, \_\_\_\_\_ and \_\_\_\_\_  
(Name) (Name)

represent and warrant that the charterer has acted with regard to this charter operation (except to the extent fully and specifically explained in Part II, Section B), and will act with regard to such operations, in a manner consistent with Part 207 of the Board's economic regulations. I (we) further represent and warrant that the charterer has not offered charter flights simultaneously with the solicitation of membership in the chartering organization in any mass media advertising or notice or through direct mailings or public notices. I (we) further represent and warrant that all charter participants have been informed of eligibility and cost requirements of Part 207 and that a flight may be canceled if ineligible participants are included.

(Date) (Signature—person with  
in organization in  
charge of charter arrangements)

(Signature and title of officer. This should be the chief officer of the chartering organization except in the case of a school charter, in which case the warranty must be by school official not directly in-

**WARRANTY OF AIR CARRIER**

To the best of my knowledge and belief all the information presented in this statement, including but not limited to, those

• Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than 5 years, or both. Title 18 U.S.C. 1001.

• Any air carrier, or any officer, agent, employee, or representative thereof, who shall, knowingly and willfully, fail or refuse . . . to keep or preserve accounts, records, and memoranda in the form and manner prescribed or approved by the Board . . . or

parts warranted by the charterer and the travel agent, is true and correct. I represent and warrant that the carrier has acted with regard to this charter operation (except to the extent fully and specifically explained in this statement or any attachment thereto) and will act with regard to such operation in a manner consistent with Part 207 of the Board's economic regulations.

(Date) (Signature and title of  
authorized official of air  
carrier)

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than 5 years, or both. Title 18 U.S.C. 1001.

**APPENDIX A**

ROUTE AIR CARRIER'S SURETY BOND UNDER PART 207 OF THE ECONOMIC REGULATIONS OF THE CIVIL AERONAUTICS BOARD (14 CFR PART 207)

Know all men by these presents, that we

(Name of route air carrier)  
of \_\_\_\_\_  
(City)  
(State)

as PRINCIPAL (hereinafter called Principal),  
and \_\_\_\_\_  
(Name of Surety)

a corporation created and existing under the laws of the State of \_\_\_\_\_  
(State)

as SURETY (hereinafter called Surety), are States of America in an unlimited sum, as required by § 207.17(c) of Part 207, for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas, the Principal, a route air carrier holding a certificate of public convenience and necessity issued under section 401(d)(1) of the Federal Aviation Act, is subject to rules and regulations of the Board relating to security for the protection of charterers of civil aircraft and has elected to file with the Civil Aeronautics Board such a bond as will guarantee to the United States Government the performance of all charter trips (other

shall, knowingly and willfully, falsify, mutilate, or alter any such report, account, record, or memorandum . . . shall be deemed guilty of a misdemeanor and, upon conviction thereof, be subject for each offense to a fine of not less than \$100 and not more than \$5,000. Title 49 U.S.C. § 1472(e).



## Chapter II—Civil Aeronautics Board

Part 208

than cargo charter trips) originating in the United States and of all overseas military personnel charter trips, as defined in Part 171 of the Board's regulations, to be performed, in whole or in part, by such carrier pursuant to contracts entered into by such carrier after the execution date of this bond;

and  
Whereas, this bond is written to assure compliance by the Principal with rules and regulations of the Board relating to security for the protection of charterers of civil aircraft for charter trips (other than cargo charter trips) originating in the United States or of overseas military personnel charters, and shall inure to the benefit of any and all such charterers to whom the Principal may be held legally liable for any of the damages herein described.

Now, therefore, the condition of this obligation is such that in the event the Principal or cause to be paid to such charterers any sum or sums for which the Principal may be held legally liable by reason of the Principal's failure faithfully to perform, fulfill, and carry out all contracts made by the Principal while this bond is in effect for the performance of charter trips (other than cargo charter trips) originating in the United States and of overseas military personnel charter trips, than this obligation shall be void, otherwise to remain in full force and effect.

The liability of the Surety with respect to any charterer shall not exceed the total cost to such charterer for air transportation services in accordance with his contract with the Principal.

The liability of the Surety shall not be discharged by any payment or succession of payments hereunder in any specified amount. The Surety agrees to furnish written notice to the Civil Aeronautics Board forthwith of all suits filed, judgments rendered, and payments made by said Surety under this bond.

This bond is effective the \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, 12:01 a.m., standard time at the address of the Principal as stated herein and shall continue in force until terminated as hereinafter provided. The Principal or the Surety may at any time terminate this bond by written notice to the Civil Aeronautics Board at its office in Washington, D.C., such termination to become effective thirty (30) days after actual receipt of said notice by the Board. The Surety shall not be liable thereunder for the payment of any damages heretofore described which arise as the result of any contracts for the performance of air transportation services made by the Principal after the termination of this bond becomes effective, as herein provided, but said termination shall not affect the liability of the Surety hereunder for the payment of such damages arising as the result of contracts for the performance of air transportation services made by the Principal prior to the date such termination becomes effective. Liability of the Surety under this bond shall

in all events be limited only to a charterer who shall within sixty (60) days after the cancellation of a charter trip with respect to which the charterer's advance payments are secured by this bond give written notice of the claim to the route air carrier, or, if he is unavailable, to the Surety, and all liability on the bond for such charter trip shall automatically terminate sixty (60) days after the cancellation date thereof except for claims filed within the time provided herein.

In witness whereof, the said Principal and Surety have executed this instrument on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

PRINCIPAL

SURETY

Name \_\_\_\_\_ Name \_\_\_\_\_ (SEAL)

By \_\_\_\_\_ By \_\_\_\_\_  
(Signature and Title) (Signature and Title)

Only corporations may qualify to act as surety and they must meet the requirements set forth in § 207.17(d) of Part 207.  
[ER-809, 88 FR 20256, July 30, 1973]

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x  
CIVIL AERONAUTICS BOARD,

Plaintiff,

v.

SCOTTISH-AMERICAN ASSOCIATION,  
INC., et al.,

Defendants. :  
-----x

Civil Action No.  
74C 915

DORAN JACOBS, being duly sworn, deposes and says:

I am a resident of the Borough of Manhattan, City and State of New York.

I am Vice-President of Carefree Travel, Inc., and of Vacation Ventures, Inc.

Carefree Travel, Inc., a New York corporation ("Carefree") and Vacation Ventures,

Inc., a New York corporation ("Ventures"), are wholly owned subsidiaries of

Imperial World Wide Group Tours, Inc., a New York corporation, of which I am

a minority stockholder. It was originally intended that Carefree handle affinity

tours only and that Ventures be restricted to so-called ITC tours, but in practice

the distinction has become blurred and the two companies have been used inter-

changeably in the affinity charter field. For convenience, therefore, all references

in this affidavit to Carefree should be deemed to apply equally to Ventures.

Except in my capacity as an officer and employee of Carefree, I engage  
in no activities whatsoever that are in any way related to the subject matter of this  
action.

The only office of Carefree is at 30 West 57th Street in Manhattan. Its  
only corporate bank account is maintained with the Chemical Bank in Manhattan.  
Carefree never advertises affinity charter tours in newspapers or magazines  
distributed to the general public. It does so advertise from time to time in trade  
journals.



Carefree is a wholesale tour operator. It deals exclusively with travel agents and does not have regular contact with individual members of the travelling public.

Its general method of operation is as follows: When an affinity group wishes to join one of Carefree's package tours it deals with a retail travel agent. The charter contract is arranged between the particular air carrier involved and the charter group. We arrange that the air passage coincides with land arrangements we have already made for hotels and other ground facilities. The travel agent receives the commission prescribed by CAB rules based upon the air cost and a somewhat larger commission is allocated to the travel agent based upon the land cost of the tour.

Carefree has been engaged in this very rapidly growing business for more than seven years. A great part of our revenue is derived from tours of short duration to Las Vegas. In recent years there have been so many groups interested in charter tours of this kind that we have been compelled to reserve for these groups airplane availabilities and hotel space far in advance.

In order to make available these vacation tours to as large a number of people as possible it is, of course, essential that the price be kept at a minimum. For this purpose our company, and other companies like ours, serve the function of constructing a continuous pattern of flights to and from the major vacation centers so as to eliminate the possibility that any airplane may have to fly any leg of a journey empty. This pattern permits us in effect to cut in half even the price that would have to be paid on an "ad hoc" or single charter basis. Thus, for example, the applicable economy class scheduled round trip fare for New York to Las Vegas is currently \$321.27 whereas the pro-rata air portion of one of our current tours to Las Vegas is only \$111.45. (It should be noted, parenthetically, in these days of critical fuel shortage that our tour structure not only saves money and permits people to fly who clearly would not otherwise do so; it saves enormous quantities of precious gasoline.)

Through charter packages coordinated by our company we shall have of hundreds of airplane flights in the next several months. A rough estimate of existing commitments for planes and hotels already reserved indicates that for Las Vegas tours alone the total revenue to the airlines for both scheduled and unscheduled airline charters will be approximately \$5,500,000, while the hotel accommodations in Las Vegas reserved for our tours will amount in the aggregate to more than \$4,000,000. At the same time in the same six month period the air revenue on affinity charters to other tour destinations will be approximately \$1,800,000 and the cost of the hotel accommodations in those places will aggregate almost half a million dollars.

In connection with the reservation of airplanes for these tours we have made commitments to airlines for the anticipated traffic as I have described. Because we are trusted customers of long standing of the scheduled and unscheduled airlines, the deposits we have been required to make to the airlines are minimal. Our outstanding deposits to hotels both in Las Vegas and elsewhere amount in the aggregate to approximately \$150,000.

It has been called to our attention that among the defendants in this action are a number of tour operators, one or two retail travel agents and two or three clubs or organizations which make a regular practice of using affinity charter tours for their members. Neither Carefree nor I have any interest whatsoever in any of the other defendants in this action. We own no stock in any of the companies; we are engaged in no joint ventures with any of the companies or individuals. We do no business with the two retail travel agents named as defendants. It may be that one or more of the East - how often defendant clubs have contracted for one or more of our tours for groups of their members in the past. The other tour operator defendants are our competitors.



It is apparent that the defendants named in this action are primarily tour operators and some principal executives of those companies. It should be noted that many other important tour operators are omitted, including some which have their principal offices in the New York area.

In addition, there are a great many tour operators, some of them among the largest and most active in the country, whose principal offices are outside of New York, but who nevertheless are engaged in organizing charter tour packages originating at New York airports.

I think the Court should take note of the probable results of the random and fortuitous selection of parties defendant in this action. If the plaintiff obtains the drastic relief prayed for all the parties who have in fact been named, including myself and my company, will live in continual peril of citation for contempt. At the same time, as a practical matter, the tour operators who have not been named, whether they have their principal offices in New York or elsewhere, will be free of that peril and may be in a position to reap enormous unjustified profits as a result.

I want to emphasize to the Court that my company performs an essential and important function that is not in any way performed by any of the other conventional segments of the travel industry. We make the land arrangements. Because we have the hotels reserved and the leisure time and entertainment features organized, we try to work it out so that the air passage for charter groups will coincide with the land arrangements. It is for this reason that we have become wholesalers of the total packages. We are convinced, and if we are given the opportunity we are positive we can convince the Court, that our charter tours do not substantially impair the regular tariff schedules of the major airlines. On the contrary, many of the scheduled airlines are among the principal beneficiaries of the revenues derived from the affinity tour packages arranged by our company and by our competitors.

We respectfully submit to this Court that the interest of the public is served by the continuation and growth of the travel structure in which we have participated. We suggest earnestly that any abrupt cessation of existing arrangements would not benefit any of the airlines but would, on the contrary, be a direct blow at that huge number of persons who would otherwise not be able to travel.

I find myself in the position of having been charged, along with the company by which I am employed, with violations and joined as defendants in the same action with me and my employer are a great many other business firms, individuals and organizations with whom I have no direct connection whatsoever. I have read the complaint and I have tried to read all the moving papers. I find no charge in any of these documents that I have acted in concert with or conspired with or participated with or joined with any one of the dozens of other named defendants in any act or transaction, whether or not it be an alleged violation of the CAB regulations.

Annexed hereto as Exhibit A are telegrams from four leading hotels in Las Vegas and San Francisco describing the impact of this action upon the hotel business in those cities and emphasizing the unfairness of deciding the equities in this matter if the hotel operators are not heard by this Court. Annexed hereto as Exhibit B is a telegram from Modern Air Transport, a supplemental airline, describing its interest in this case and explaining what will happen to it and other airlines like it if they are not also joined in this action.

Additional letters and telgrams are on their way to us but because of the limitations of time have not yet arrived. When they do, I will submit them to counsel so that they may be added to these if the Court deems it appropriate.

Sworn to before me this  
3rd day of July, 1974

*Michael Harris*

*David J. [Signature]*

NOTARY PUBLIC  
No. 41-1013-130  
Qualified in Queens County  
Cert. filed in New York County  
Commission Expires March 30, 1976

- 5 -

37a



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x  
CIVIL AERONAUTICS BOARD,

Plaintiff,

- against -

SCOTTISH AMERICAN ASSOCIATION,  
INC., et al.,

Defendants.  
-----x

:  
: (JUDD, J.)

: Civil Action File  
: No. 74 Civ. 915

:  
: AFFIDAVIT

STATE OF NEW YORK )  
: ss.:  
COUNTY OF NEW YORK )

ESTHER ZETLIN, being duly sworn, deposes and says:

I am the President of Surrey International Travel, Inc., a New York corporation ("Surrey"). I am the owner of one-third of the issued and outstanding stock of Surrey; the other two-thirds are held, respectively, by Geraldine Gorcey and Lenore Aenus.

Geraldine Gorcey's husband, Jack Gorcey, is also named as a defendant in this action but the complaint incorrectly alleges that Mr. Gorcey is an officer, agent, servant or employee of Ernie Pike Associates, Ltd. ("Pike"). Mr. Gorcey is an employee and director of Surrey but, is not an officer, employee, director, or stockholder of Pike.

My husband, Henry Zetlin, has been a director of Surrey and is presently employed by Pike; he is also named as a

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x  
CIVIL AERONAUTICS BOARD, :  
Plaintiff, : (JUDD, J.)  
- against - : Civil Action File  
SCOTTISH AMERICAN ASSOCIATION, : No. 74 Civ. 915  
INC., et al., :  
Defendants. : AFFIDAVIT  
-----x

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss.:

ERNIE PIKE, being duly sworn, deposes and says:

I am president, director and sole stockholder of Ernie Pike Associates Ltd., a New York corporation which has its only office at 308 Fifth Avenue, Manhattan, New York ("Pike"). Pike and I are both named as defendants in this action. I have performed no acts and engaged in no activities related to the travel business or to the subject matter of this action except in my capacity as officer and stockholder of Pike.

Pike is a wholesale tour operator. It organizes the land arrangements for complete package tours. In our business we utilize charter flights on schedule airlines almost exclusively. Since our company is not a retail travel agent, does not have authority to issue tickets under the IATA and ATC rules and therefore cannot earn the customary commission on such air fares, it has been our uniform practice to



have a travel agent reserve specific flights and arrange the charter contracts between affinity groups and airlines. For this purpose we deal primarily with Surrey International Travel, Inc., an authorized travel retail agent with whose management I have been friendly for many years. My company does not do business with individual members of the travelling public.

The main sources of our revenues are charter tours to Las Vegas and Hawaii. There are so many affinity groups interested in these tours that we are compelled to make reservations for hotel space far in advance. An estimate of our existing commitments indicates that the hotel and ground accommodations already reserved in Las Vegas amount in the aggregate to a figure in excess of \$2 million, while the comparable accommodations in Hawaii amount to three quarters of a million dollars. The related air revenues for the Las Vegas tours already committed amount to approximately \$3 million and for those to Hawaii to approximately three quarters of a million dollars. Substantial deposits have been made with the airlines by Surrey and with the hotels and ground facilities by my company both in Las Vegas and in Hawaii.

Neither I nor my company has any interest as officer, director or stockholder in any of the other defendants in this action, nor am I engaged in a joint venture with any of the other defendant companies or individuals. I have already explained my conventional business relationship with Surrey and other retail travel agents. The other wholesale tour operator

defendants are my company's competitors. One or more of the clubs and organizations joined as parties defendant have contracted for tours coordinated by my company for groups of their members in the past; that is the only connection that I have or that my company has with those clubs or those organizations.

The Court may take cognizance of the fact that the wholesale tour operators named in this action are only a few of the great number of such tour operators. If the drastic relief prayed for in this action is granted, we who are named as defendants, unlike our unnamed competitors, will continue to engage in business under the continuing threat of contempt citation for even an accidental violation.

Pike, like other wholesale tour operators, performs an important function. It coordinates inexpensive affinity group air transportation with hotel and other ground facilities also offered at a relatively low cost because of our ability to buy them on a massive wholesale basis. We should like an opportunity to show that our charter packages do not substantially impair the regular tariff schedules of the major airlines. On the contrary, the charter tours like the ones my company puts together account for a very sizable portion of the revenue of many of our largest scheduled carriers.

My company does not advertise to the general public in either newspapers or magazines. Some time ago it did a small amount of advertising in trade journals which it has discontinued. Our contacts are now exclusively with retail travel agents and



with clubs and other qualified affinity groups. The fliers that  
bear our name are prepared solely for circulation among travel  
agents and the members of these groups.

The public is well served by the continuation--and  
hopefully by the growth--of the travel structure in which we  
participate. Any abrupt interference with existing contractual  
arrangements would cause substantial pecuniary loss, great  
inconvenience and chaotic confusion among travellers.

Sworn to before me this  
3<sup>rd</sup> day of July, 1974.

Michele Haas

Don Filer

MICHELE HAAS  
NOTARY PUBLIC, State of New York  
No. 41-1613630  
Qualified in Queens County  
Cert. filed in New York County  
Commission Expires March 30, 1975

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

\*\*\*\*\*

CIVIL AERONAUTICS BOARD,

Plaintiff,

-against-

SCOTTISH-AMERICAN ASSOCIATION, INC., et al.,

Defendants

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\*  
\*  
\*  
\*  
\*  
\*  
\*

CIVIL ACTION

NO.

CITY OF WASHINGTON )  
DISTRICT OF COLUMBIA ) SS

AFFIDAVIT OF GEORGE S. MINICHIELLO

GEORGE S. MINICHIELLO, being duly sworn, deposes and says that I make this affidavit on the basis of my own knowledge, information and belief, and that:

1. I reside in Washington, D. C. and I am employed as a Special Agent of the Bureau of Enforcement, Civil Aeronautics Board, Washington, D. C. During the course of my official duties, I conducted an investigation of the affinity charter market in New York City in the months of April and May 1974. In the implementation of that investigation a series of approaches were made to organizations believed to be selling individual tickets on affinity charter flights as indirect air carriers. Generally, a call or visit was a preliminary step in the approach to determine whether each organization would offer affinity charter air transportation services to an individual member of the general public without qualification, and in each case I represented myself to be a member of the general public who had learned from a friend or neighbor about their organization. Subsequently, I would attempt to obtain individual transportation in a given market on a charter flight without ever representing myself to be a member of any chartering organization although pursuant to my ticket purchases I was in several instances made a "member" of such organization.



are attached as Exhibit 26. In addition, I observed that my name appeared in the passenger manifest. Also noteworthy is that none of the officials of either British Airways or JAT were able to tell me the name of the chartering organization, although a British Airways' secretary stated that she thought it was the "Turkish Association".

CAREFREE TRAVEL, INC./VACATION VENTURES, INC.

27. On April 10, 1974 I visited the offices of Carefree Travel, Inc./Vacation Ventures, Inc. at 30 West 57th Street, New York, New York 10019. The following organizations were listed on the building directory as being in the same office location as Carefree Travel, Inc., to wit; Vacation Ventures, Inc., Mid-Manhattan Vacations International, Inc., Eric Shoenberger, Lewis Scalise, John [redacted], McCord and Mae, Ltd., Stewart Mason, Ed LaForte, Emil [redacted] Martin Kausman, Imperial World Wide Tours, H. Harris, and Frank Doblin.

28. In Carefree's offices I spoke to a Ms. Liz DeTurris to whom I indicated my interest in purchasing an inexpensive round-trip ticket to Las Vegas. She first asked if I were a travel agent, and I replied no. I then asked her what departure dates were available. In response she informed me there were weekly Thursday departures and I selected a May 2 flight with a return on May 5. The cost of the round trip air transportation, identified to be "probably" on Saturn Airways, was \$160. I was to be notified of details approximately ten (10) days prior to departure. Attached as Exhibit 27 is a receipt on Carefree Travel acknowledging receipt of \$160. Also attached as Exhibit 28 is Ms. DeTurris' business card.

29. Approximately seven to ten days prior to flight time I received a "tour membership card" and "air only" baggage tags in the mail from Carefree Travel. They are attached hereto as Exhibit 29. On May 2, 1974 I checked in for a Capitol Airways

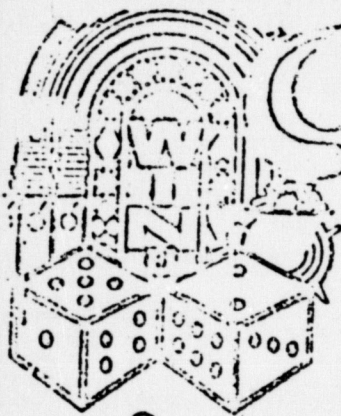
Flight No. 150 from New York to Las Vegas at the North Passenger Terminal at JFK Airport, the carrier and departure point which had been indicated on the tour membership card. At check in I obtained a passenger boarding pass as well as a green baggage tag (Exhibit 30) from the agent upon presentation of the "tour membership card". I did not board this flight although I personally observed that my name appeared on one of the pages of the four-page passenger manifest.

TURKISH AMERICAN MEDITERRANEAN ASSOCIATION, INC.

30. On April 16, 1974 I visited the offices of the Turkish American Mediterranean Association, Inc. (TAM) at 500 Fifth Avenue New York, New York 10036. I had previously been in the office of TAM when they were located at 70 Fifth Avenue and at that time had identified myself by the alias "Mario Giafo". Consequently, I used this same alias during my visit on the 16th. As before, I dealt with a young woman named Heidi--- name I understand to be a nickname. When I asked her about the availability of inexpensive air transportation to Istanbul, Heidi gave me a flyer (Exhibit 31) detailing available flights.

31. After leaving their offices for approximately an hour I returned, giving Heidi a money order made out to the Turkish American Mediterranean Association, Inc. and drawn on the Chase Manhattan Bank in the amount of \$390 (Exhibit 32). As agreed, this represented full payment of \$385 for round trip air transportation departing from New York City for Istanbul on June 3rd with Overseas National Airways and returning on June 19, 1974 on Pan American. The additional five dollars was paid for "membership" in TAM. Attached as Exhibit 33 is the receipt given me acknowledging payment of \$385 as "payment in full". Additionally, I was required to fill out and submit a "reservation request" form listing the dates I wished to travel (Exhibit 34) as well as a document styled, "membership renewal form" (Exhibit 35).





# SWINGIN' VEGAS



## TOUR MEMBERSHIP CARD

FOR Ly. G. Lymichillo HOTEL Air Only  
SEAT RESERVATION \_\_\_\_\_

PLEASE TIE TAGS SECURELY TO LUGGAGE

### GENERAL INFORMATION

**BAGGAGE TAGS:** PRINT YOUR NAME AND ADDRESS ON THE TAGS. TAGS MUST BE SECURELY ATTACHED TO YOUR LUGGAGE. DO NOT CHECK BAGGAGE IF TAGS ARE NOT ATTACHED.

**BAGGAGE:** Delivered directly to your room. This takes nearly two hours.

**DINNER AND SHOW COUPONS:** Given to you personally at check-in at your hotel.

**ARRIVAL IN LAS VEGAS:** Buses will meet your flight. You will be briefed on the bus by our tour representative.

**ARRIVAL AT HOTEL:** You are preregistered and will be given your room key on arrival by our tour representative.

**CHECK OUT:** Please pay incidental charges and do not sign for anything after this time.

**VALUABLES:** Do not pack in your suitcase. Carry them on board. Liability by carrier for value of baggage shall not exceed \$500. per passenger. Additional insurance may be purchased through your travel agent. Tour operator is not responsible for loss or damage to luggage.

**ARRIVAL TIME:** Arrival time in New York may be checked by calling (212) 656-7035 (for World Airways, call Braniff ... 656-6194).

ONLY COPY AVAILABLE

764

ONLY COPY AVAILABLE

WELCOME TO **SWINGIN' VEGAS**

WE MAINTAIN AN OFFICE IN LAS VEGAS IS:  
FOR YOUR CONVENIENCE.  
YOUR TOUR REPRESENTATIVE IN LAS VEGAS IS:  
**AMERICAN TOUR AND TRAVEL**

Telephone (702) 736-2902

Feel free to call for any assistance you may require.

**SWINGIN' VEGAS**

AIRLINE CAPITOL AIRLINES #150

CHECK IN POINT North Passenger Terminal (Kennedy Airport)

DATE MAY 2, 1974

DATE MAY 5, 1974

Depart KENNEDY 9:00 A.M.

LEAVE LAS VEGAS 2:00 P.M.

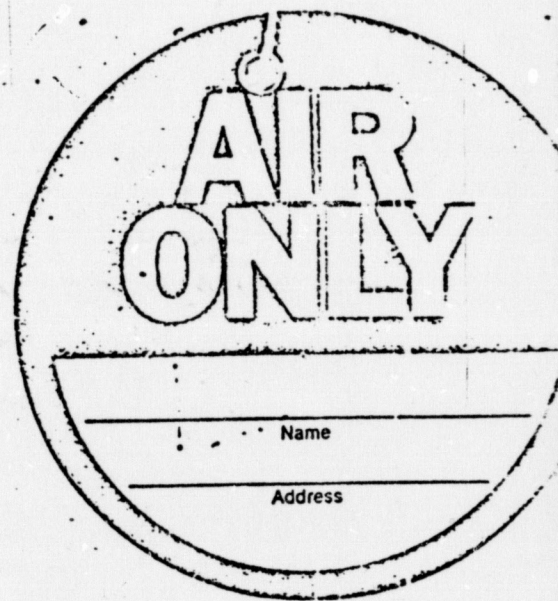
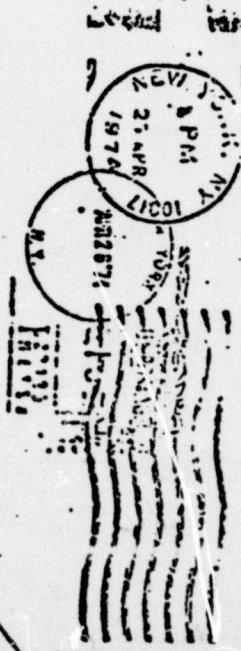
Arrive LAS VEGAS 11:00 A.M.

Arrive KENNEDY 9:30 P.M.

Non-STOP



for J. J. J. J. J.  
2129 E. 22 Street  
Brooklyn, N.Y.



48a

CAPITOL INTERNATIONAL AIRWAYS

PASSENGER

BOARDING PASS

MUST BE SURRENDERED  
AT GATE BEFORE BOARDING AIRCRAFT

**Capitol  
International Airways**

Smyrna Airport • Smyrna, Tenn. 37167

**BAGGAGE LIABILITY INFORMATION**

NOTE — CAPITOL INTERNATIONAL AIRWAYS  
is NOT RESPONSIBLE for fragiles, perishables,  
liquids, or high value articles (incl. jewelry) when  
carried in checked luggage.



C.A.B. regulations), and the passenger manifests. For defendants other than those named in charter documentation, although requested from the direct air carrier, has not been obtained as of the date this affidavit is executed.

29. The chart attached as Exhibit 12 contains a calculation of the pro rata fare which I should have paid had I been a bona fide member of a charterworthy organization flying on a lawful affinity charter at the charter price and with the total passengers indicated on the charter documentation supplied to the C.A.B. and required by law to be maintained. The calculation of such pro rata fare was made pursuant to the Civil Aeronautics Board regulations which provide such method; these 14 C.F.R. sections 207.43, 208.23, 212.43, 214.33. In each case, the calculated pro rata fare is compared to the amount I actually paid for the air transportation and which amount in no case was increased or decreased to achieve a pro rata fare. Additionally, the chart shows that in every case the amount substantially in excess of what a lawful affinity charter passenger would have paid; the chart also shows what that increment was for the flight as a whole, again in each case a very substantial amount. It should also be noted that the amount listed under "Minichiello purchase price" includes, where appropriate, the amount which it may have paid for a "membership fee". The "pro rata" fare includes any applicable "administrative expenses" listed on the Statement of Supporting Information. The purported chartering organization whose name is shown on the charter contract and Statement of Supporting Information is also listed for each flight. However, as to Farragut, Carefree, and German Overseas Tours I, learned the name of the organization on whose charter flight I had purchased transportation only upon the receipt of the contract from the

direct air carrier. With respect to defendant Professional & Alumni, I learned the names of the charterers only after boarding the aircraft; there was no attempt to make me a "member" of any of them.

30. I declare under penalty of perjury that the foregoing is true and correct to the extent of my knowledge.

*George S. Minichiello*  
George S. Minichiello

Subscribed and sworn to me this

15<sup>th</sup> day of June, 1974.

(SEAL) *R. M. J. Paul*  
Notary Public

My Commission expires *Nov. 30, 1976*



529

<u>DEFENDANT</u>	<u>PURPORTED CHARTERING ORGANIZATION</u>	<u>TOTAL COST FROM CHARTER DOCUMENTS</u>	<u>TOTAL ADULT PASSENGERS ENPLANED</u>	<u>PRO RATA FARE</u>	<u>MINICHIELLO PURCHASE PRICE</u>	<u>INCREMENT PER PASSENGER</u>	<u>INCREMENT PLANET</u>
The Professional & Alumni Association, Inc.	Insiders (National Health and Recreation Club)/ Teacher Group	\$11,622	145	\$80.15	\$131 (MEM \$6)	\$50.85	\$7,373
Eastern Sportsmen's Club, Inc.	Suburban Sporting Club	\$24,265.18	178	\$138.63	\$185 (MEM \$10)	\$46.37	\$8,253
Farragut Holidays, Corp.	Número Uno, The Chalet Club, Nassau/Suffolk Academy of Dentistry	\$63,492.27	249	\$254.98 (plus or minus \$2)	\$308	\$53.02	\$13,200
Carefree Travel, Inc./Vacation Ventures, Inc.	Willowood Rifle and Pistol Club	\$22,276.51	180	\$123.75	\$160	\$36.25	\$6,525
German Overseas Tours, Inc.	Arbeitskreis Koelner Hochschule, e.V. (Cologne, West Germany)	\$26,565 (one way flight; includes \$1,035 administrative expenses, approximately 3 times next highest administrative expense of defendants)	344	\$77.22	\$105 (\$210 paid for round trip; two separately chartered legs)	\$27.78	\$9,550
Nationwide Leisure Corp.	Employees of the New York City Board of Education; Gastronomical Association of Pennsylvania	\$37,217.88	250 (from passenger "list", not manifest)	\$148.87	\$169.63*	\$20.76	\$5,190

\*\$290.00 (actually paid) — 40.00 (single supplement quoted to me at Liberty Travel) — 102.37 (ground package as in Statement of Supporting Information) + 22.00 ("fuel surcharge" also quoted at Liberty Travel where I bought my ticket; charter contract reflects no such fuel surcharge): \$290 — 40 — (102.37 - 22.00) = \$169.63

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Spend

# THANKSGIVING

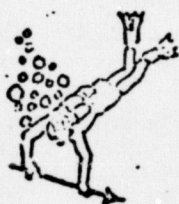
IN

# FREEPORT

NOV. 22-25, 1973

STAY AT THE

*Kings Inn and Golf Club*



**\$179** per person  
dbl. occ.

For Affinity Groups  
as small as 40 persons

Plus \$35 tax & services

## INCLUDES

- \* Round trip jet transportation \* Hotel accommodations
- \* Transfers between airport and hotel \* Baggage tips \* Rum swizzle party
- \* All U.S. & Bahamian taxes

**M.A.P. Option** \$11 per day includes full American breakfast and dinner.  
Free golf included

NOT INCLUDED: Bahamian currency exchange for either  
program and tips to chambermaids.



33 West 57 Street, New York, N.Y. 10019

Ask for Rachel 977-4820  
All other business 977-4800

10/22/73

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539

*Exhibit 15*



RDB

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
CIVIL AERONAUTICS BOARD, :  
 :  
Plaintiff, :  
 :  
-against- : 74-C-915  
 :  
SCOTTISH AMERICAN ASSOCIATION, :  
INC., et al., :  
 :  
Defendants. :

United States Courthouse  
Brooklyn, New York

August 5, 1974  
10:30 o'clock A.M.

Before :

HONORABLE ORRIN G. JUDD, U.S.D.J.

(Hon. Vincent Battaglia USM)

I hereby certify that the foregoing is a  
true and accurate transcript from my sten-  
ographic notes in this proceeding.

EMANUEL KARRO Official Court Reporter  
OFFICIAL COURT REPORTER U.S. District Court

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54a

Pike-direct/Battocchi

1

2

Q OK.

3

A And --

4

Q Then there is you, Mr. Ernie Pike --

5

THE COURT: Where do you work?

6

THE WITNESS: 308 Fifth Avenue.

7

THE COURT: That is what your office is, too?

8

THE WITNESS: Yes, sir.

9

Q I think that you have included in your count six,

10

is there a seventh?

11

Does your wife work?

12

A Yes, sir, Stella is the bookkeeper.

13

Q And Mr. Zetlin is salaried by Ernie Pike Associates?

14

A Yes.

15

Q And you are also salaried?

16

A Yes.

17

Q Who runs the corporation on a day-to-day basis?

18

A Well, I would say Henry does.

19

Q What is his function in the corporation?

20

A He does general office work and whatever matters

21

come in they all share, in other words, whatever the paper work

22

is or whatever has to be done it's allocated amongst the

23

employees of the office.

24

Q Do you also run the corporation?

25

A When you say "run", I make contracts with hotels

554



26  
Pike - direct

I will rephrase that; Does Pike deal with retail travel agents?

A Yes.

Q What is the nature of the business relationship between those retail travel agents and Pike?

A They sell packages, I presume. They sell packages to members of organizations.

Q All right.

Do they transfer funds that they received for these packages to Pike, Ltd.?

A Right.

Q Do they deduct from the amount of money they receive for a package, a commission which they retain for themselves?

A Yes, sir.

Q What is the -- do you have a standard commission arrangement with all the retail travel agencies with whom you deal?

A No, sir.

Q How is a commission arrangement with a particular retail travel agency established?

A We tell them the commission they will get on a particular group package.

Q All right --

MR. BOROS: Your Honor, I am going to object

56a

Eke - direct

to a continuation of this colloquy. It is interesting, certainly, about the industry, but I don't see what it has got to do with the issues.

THE COURT: I disagree with you entirely. I think it is terribly important to know the monetary arrangements in these package deals.

MR. BOROS: All right.

THE COURT: That's after we saw what happened to Scottish-American, certainly we will allow an inquiry here into that subject.

MR. BOROS: That's why we asked for a severance with regard to Scottish-American.

THE COURT: It is still an important question.

MR. BOROS: Yes, your Honor.

BY MR. BATTOCCHI:

Q What is the lowest percentage commission Pike gives to any retail travel agency?

A We figure it in dollars and cents rather than percentages. I mean, in other words, on a package I will give the travel agent so much commission, it varies according to the package.

THE COURT: Who decides what the commission is to be?

THE WITNESS: I do, sir.



7 1

Pike-direct

2 Q How does the agent know what package  
3 available to sell?

4 A They will call us, I presume, for availability.  
5 In other words, it's established that we are in two markets,  
6 Las Vegas market and the Hawaii market, and if they get a  
7 group and say they want to go to Hawaii or something, they  
8 will call us and say, Do you have space available for Hawaii  
9 for a certain date?

10 Q Do they ask you what the price of the package is?

11 A They ask what the cost will be to them, yes.

12 Q Do they ask you if there is a price at which  
13 they are to sell the package?

14 A No, we don't care what they sell it at.

15 Q Do you ever hold out prices for packages --

16 A I think I would ask you to repeat it.

17 Q Do you ever hold out prices for packages on  
18 flyers or other solicitation material distributed by you?

19 A Within the last six months --

20 MR. BOROS: When?

21 MR. BATTOCCHI: Ever.

22 MR. BOROS: "Ever?" I object to ever.

23 Q Have you since you have been incorporated held  
24 out prices for packages of flyers or other materials circulated

25 by you?

58a

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1  
2 MR. NIZER: Objection.

3 THE COURT: The witness inquired whether the  
4 last six months, so apparently there is a difference,  
5 and let us be honest with every witness.

6 Will you answer the question?

7 In the last six months have you done it?

8 THE WITNESS: At a suggested price, yes.

9 THE COURT: Now prior to the last six months,  
10 did you do it in a different way?

11 THE WITNESS: No, sir.

12 MR. BATTOCCHI: All right.

13 Q So during the entire time that you have been in  
14 business you have always held out a suggested price?

15 A A suggested price unless -- I mean they can vary  
16 it themselves but -- well, then what it is going to cost them  
17 is the suggested price because in dealing with the market  
18 there is a certain price that prevails in the market.

19 Q Who put the suggested price in the flyers?

20 A When we sent out flyers, we did.

21 Q Does retailer know what his commission on the  
22 package advertised on the flyer will be?

23 MR. NIZER: Objection, sir.

24 THE COURT: Do you know what the question is?

25 Q Does a retailer --



MR. BATTOCCHI: Your Honor --

THE COURT: Next question.

Q Do you presently sell packages to any retailers in amounts less than 40?

A I don't sell them personally.

Q Does Pike sell packages to any retailers in amounts less than 40?

A No. The groups are made up of individuals and when you say in amounts less than 40, every group is 40 individual people.

Q Does Pike presently sell packages to retailers in amounts less than 40?

MR. BOROS: Asked and answered.

Q Is your answer that Pike never sells packages in groups less than 40?

A I have to qualify that.

THE COURT: Do that.

THE WITNESS: Each group of 40 or 60, whatever it is, they could be members of that organization that purchases packages from us and if they are members of the organization and two or four of them come in, we would sell them today.

Q You would sell numbers of two and four?

A If they are members of the organization. We

1 presume they are unless they are not. If they say I am not  
2 a member of the organization, we say you cannot go.

3 Q If the customer is silent --

4 A We don't speak to the customers.

5 Q To whom do you sell these packages of two or  
6 four?

7 MR. BOROS: I object. He's putting words in  
8 his mouth.

9 MR. NIZER: As I understand he not only doesn't  
10 sell but he says if there are a package of, minimum  
11 of 40, and members of that group join in that group  
12 that can be arranged.

13 THE WITNESS: That is right. A group can call  
14 up and say we have another 10 or 12 in addition to  
15 the 40 and we do that.

16 Q Do they ever sell ten packages, eight packages,  
17 15 packages or one package to a retail travel agent?

18 A As part of a group, yes.

19 THE COURT: As an isolated incident, no.  
20 As part of a group, yes.

21 Q If a travel agent asks you for five pages and  
22 to reserve five spaces on a flight, you will sell to them?

23 THE COURT: If it is an adjunct of an already  
24 arranged charter, the answer is yes.  
25



5

Pike - direct

Q You receive money from the retail travel agents?

A Yes.

Q And you transmit that to Surrey?

A Part of it, the air portion in one lump sum.

Q You submit the land portions to the hotels?

A Right.

MR. BOROS: He didn't testify to that.

He said he kept part of the profit.

Q In the event a flight is cancelled, do you take a risk of a loss on that flight?

MR. NIZER: Objection.

Q Are your hotel rooms booked in advance?

A Yes.

Q If you don't fill those rooms must you pay for them?

MR. BOROS: Objection.

THE COURT: Sustained.

Q When you arrange for air space do you make a payment to Surrey to secure that air space?

A Payment is made, I don't know when. The airline requires it 30 days or 20 days, whatever it is, whenever it is we pay Surrey and Surrey pays the airline.

Q How long in advance do you pay Surrey?

6

Pike - direct

MR. NIZER: Objection.

Q You make a payment to Surrey for the whole place?

A Evidently.

Q Take TWA --

A I don't know.

Q Do you make a deposit to Surrey in advance of the flight?

THE COURT: He testified yes.

Q Let's say after the initial deposit the flight is cancelled --

THE COURT: Sustained, it is irrelevant.

MR. BATTOCCHI: One of the critical elements is where the individual involved takes risk of profit or loss.

THE COURT: If they cancel the flight, of course, they have to get their money back.

THE WITNESS: Yes, the party who put it up gets it.

Q Do you get the desposit from Surrey?

MR. BOROS: The question is totally unclear.

MR. NIZER: And irrelevant.

MR. BATTOCCHI: It was the Court's question

Mr. Nizer objected to.

63a



Pike - direct

7

Q You make a deposit to Surrey in advance?

A Yes.

Q Is there a written undertaking between you?

A No.

THE COURT: They have a memorandum of reservation or something like that.

Q Is it the understanding if they don't fill the space they get the money?

A They only get the money after.

Q Is the amount you pay to Surrey an amount for the entire planeload?

MR. BOROS: I object.

THE COURT: Sustained.

Q How is the amount you pay Surrey --

MR. BOROS: I object to the words "you pay."

He testified he is a conduit not that he pays for it.

Q You testified you transmit money to Surrey for each flight; is that correct?

A That's correct.

Q At some point if the money is transmitted in installments the total amount of funds owing to Surrey is paid by you; isn't that correct?

MR. BOROS: I object.

649

Pike - direct

8

Q You transmit to Surrey?

A Right.

Q How is the amount of money you transmit to Surrey, total amount, calculated?

A On the charter price of the plane.

Q Surrey receives a charter price from the direct aircraft?

MR. BOROS: Objection.

THE COURT: Overruled.

Q How does he know?

MR. NIZER: I object on the ground it is calling for a conclusion of the witness about somebody else's act.

THE COURT: Sustained.

Q Do you know -- how does Surrey determine the amount of money you should pay it?

THE COURT: If you know.

A Yes.

THE COURT: How do they do it?

THE WITNESS: The price is given by the airline.

Q The price is for a plane load?

A Not necessarily.

Q If it is not a split charter, it is for



1 9  
2 an entire planeload?

3 A That's correct.

4 Q Do you transmit to Surrey the same amount of  
5 money that Surrey transmits to the air carrier?

6 A Right.

7 Q The amount of money you transmit is fixed for  
8 particular flights?

9 A Right.

10 Q That amount of money will be the same whether  
11 you sell 175 or 173 or 171 packages?

12 A The airline as I understand it, makes an  
13 agreement based on full capacity plane.

14 Q The amount you transmit to Surrey will be the  
15 same whether you sell 175, 173 or 171 or 165 packages?

16 MR. NIZER: I object on the ground there is  
17 no foundation laid for that.

18 The contract is not between this company and  
19 the airlines.

20 THE COURT: Sustained.

21 Q You pay Surrey a particular amount for each  
22 flight?

23 A Right.

24 Q Is that amount the same whether he sells 175  
25 packages on that flight or less?

OVERSEAS NATIONAL AIRWAYS

May 9, 1974

Mr. Martin Kauffman  
Executive Vice President  
Vacation Ventures  
30 West 57th Street  
New York, New York 10019

Dear Mr. Kauffman:

LETTER OF AGREEMENT

This will confirm the understanding and agreement reached between OVERSEAS NATIONAL AIRWAYS, INC. (ONA) and VACATION VENTURES (AGENT).

ONA recognizes that AGENT has as its clients numerous organizations and groups which are charterworthy pursuant to the provisions of Part 203 of the Economic Regulations of the CAB, ONA further recognizes that such organizations and groups customarily make their travel arrangements during peak travel periods when aircraft capacity is not always readily available.


THEREFORE, to facilitate negotiations with its clients, AGENT has requested and ONA has agreed to reserve certain aircraft capacity subject to the following terms and conditions:

1. AIRCRAFT TYPE AND PROGRAM

DC-8-21 with 179 seats with one class service. Affinity and/or single entity flights weekly, on Thursday and Sunday commencing on May 19, 1974, terminating on December 29, 1974 and operating between JFK/LAS/JFK, with extension of the program into 1975 subject to mutual agreement on rates and aircraft availability.

2. PERIOD OF RESERVATION:

From date hereof or from date by AGENT to ONA of the deposit specified herein, whichever is later, until execution by ONA of an Aircraft Charter Agreement(s) relating to the aforementioned flights.

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# OVERSEAS NATIONAL AIRWAYS

-2-

May 9, 1974

## 3. CHARTER PRICE:

A. The total charter price shall be \$22,375.00 (net) based upon an assumed fuel price of 21.5 cents per U.S. gallon. The above charges are subject to an increase not to exceed 10% of the charter price in 1974 to reflect fuel cost increases. Charterers and/or AGENT will be notified of such increases at least 30 days prior to departure if imposed and such notice provided ONA by fuel suppliers.

B. Additional ferry charges will be at applicable tariff rate which is:

Ferry charges: \$700 per Departure Leg

\$3.20 per Mile

C. In the event an aircraft is released for departure by charterer with less than 179 passengers for DC-8-21, ONA will nevertheless be paid the total number of passengers per flight set forth above as the seating capacity of the DC-8-21. 147

## 4. ADDITIONAL CHARGES:

Transportation taxes, security charges, etc., additional liquor service and special menus, if required.

## 5. PAYMENT TERMS:

### A. DEPOSIT

AGENT shall pay to ONA the sum of \$25,000.00 by certified check on the date hereof which is refundable within 30 days after last departure of the program and upon completion of all contractual obligations under this AGREEMENT.

### B. BALANCE

Thirty days prior to departure of each flight or series of flights referred to herein, the total price for each trip is to be paid ONA.

MLC 147

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## OVERSEAS NATIONAL AIRWAYS

-3-

May 9, 1974

### 6. CANCELLATION TERMS:

In the event of cancellation of any flight or series of flights referred to herein, AGENT shall pay to ONA as liquidated damages the following sum:

A. If flight cancelled by AGENT in writing to ONA at least 45 days prior to date of departure, no penalty involved.

B. If flight cancelled within 45 days of date of departure and ONA is required to fly ferry legs as a consequence of any flight cancellation, AGENT shall reimburse ONA for such ferry mileage at the rate specified in Paragraph 3 herein.

C. If AGENT cancels two (2) successive legs on same calendar day, ONA will receive \$500 per leg in addition to any ferry mileage created due to this cancellation.

D. ONA or the AGENT shall have the right to terminate the AGREEMENT, at will, at any time upon the giving of at least forty five (45) days written notice to the other without incurring any penalty or liability.

### 7. DOCUMENTATION:

AGENT understands and will inform each charterer of the aircraft referred to herein that ONA is entitled to place conclusive reliance on the information and statements provided by AGENT and charterer in connection with eligibility of any passenger, group of passengers, or organization pursuant to applicable government regulations. AGENT further understands and will inform each such charterer that ONA reserves the right without liability to AGENT or charterer to refuse to board any passenger on either an outbound or an inbound flight who is deemed to be ineligible by any appropriate government inspector or who, in the reasonable belief of ONA, its agents, servants or employees, is deemed to be ineligible.

### 8. ONA AIRCRAFT CHARTER AGREEMENT:

AGENT also understands and will inform each charterer of the aircraft, referred to herein, this AGREEMENT and all charters performed under this AGREEMENT are subject to terms and conditions of the ONA Aircraft Charter Agreement attached hereto and made a part hereof of this AGREEMENT.

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# OVERSEAS NATIONAL AIRWAYS

-4-

May 9, 1974

## 9. FORCE AND EFFECT:

This Letter of Agreement shall be of full force and effect only when signed by both parties hereto and upon payment by AGENT to ONA of the deposit referred to herein. Upon the execution of an Aircraft Charter Agreement, the terms hereof shall be superseded forthwith by such AGREEMENT to the extent that such AGREEMENT relates to a flight or series of flights referred to herein but shall continue in full force and effect insofar as they relate to each remaining flight or series of flights referred to herein.

### ACCEPTED:

VACATION VENTURES

By [Signature]

Title Exec. V.P.

Date 5/16/74

Very truly yours,

OVERSEAS NATIONAL AIRWAYS, INC.

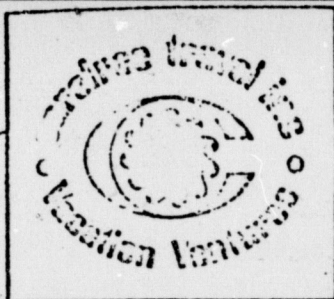
By [Signature]

Title Walter Garbalinski  
Assistant Vice President  
Market Planning

Date \_\_\_\_\_

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709

**SWINGIN' VEGAS AVAILABILITY****Thurs. - Sun. or Sun. - Thurs.**

Dates Listed Below Show Space Available On Our Las Vegas Program To:  
STARDUST, ALADDIN, FRONTIER, TROPICANA, LAS VEGAS HILTON, CAESAR'S PALACE  
AND THE MGM GRAND

Please Note Sold Out Dates

AUG. 1 - 4  
AUG. 4 - 8  
AUG. 8 - 11  
AUG. 11 - 15  
AUG. 15 - 18  
AUG. 18 - 22  
AUG. 22 - 25  
AUG. 25 - 29  
AUG. 29 - SEPT 1 - SOLD OUT  
SEPT 1 - 5  
SEPT 5 - 8

SEPT 1 - 12  
SEPT 12 - 15  
SEPT 15 - 19  
SEPT 19 - 22 SOLD OUT  
SEPT 22 - 26 SOLD OUT  
SEPT 26 - 29  
SEPT 29 - OCT 3  
OCT. 6 - 10  
OCT. 27 - 31  
OCT. 31 - NOV. 3

**Dinner & Show Option... \$33**  
**at the Stardust, Aladdin, Frontier, Tropicana & Caesar's Palace**

Tropicana Dinner Show  
Aladdin Buffet Dinner  
Tropicana Buffet Dinner  
Hilton Lounge Show & Drink  
Tropicana Lounge Show & Drink  
Aladdin Late Show & Drink

**Las Vegas Hilton Hotel**  
**Dine-Around... \$33-**

Hilton Dinner Show  
Tropicana Dinner Show  
Tropicana Buffet Dinner  
Hilton Lounge Show & Drink

**MGM Grand Hotel**  
**Dine-Around... \$33**

MGM Grand Dinner Show  
Tropicana Dinner Show  
Tropicana Buffet Dinner  
MGM Grand Lounge Show & Drink

7/31/74

71a



UNITED STATES OF AMERICA  
CIVIL AERONAUTICS BOARD  
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board  
at its office in Washington, D. C.  
on the 27th day of February, 1970

-----  
Agreements adopted by the Joint :  
Conferences of the International :  
Air Transport Association (IATA) :  
relating to transatlantic fares :  
-----

Docket 21770  
Agreement C.A.B. 21537  
R-1 through R-13 and  
R-15 through R-49  
Agreement C.A.B. 21547

ORDER

There have been filed with the Board, pursuant to section 412 of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations, agreements between various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of Joint Conferences 1-2 and 1-2-3 of the International Air Transport Association (IATA), adopted at meetings held in Caracas, Venezuela, in November and December 1969. The agreements, which have been assigned the above-designated agreement numbers, would close transatlantic fares for a 13-month period March 1, 1970, through March 31, 1971.

The Board by Order 70-1-84, dated January 16, 1970, established a 10-day period for the receipt of comments in support of or in opposition to the agreements, and it provided for oral argument which was heard on February 4, 1970.<sup>1/</sup>

- <sup>1/</sup> Appearances were made by:  
Robert M. Lichtman and Clayton L. Burwell for National Air Carrier Association (NACA);  
Robert N. Duggan for Pan American World Airways, Inc. (Pan American);  
Ulrich V. Hoffmann for Trans World Airlines, Inc. (TWA);  
Andrew Frey for Creative Tour Operators Association  
In addition, comments were received from the American Society of Travel Agents, Inc., and the Department of Transportation.

Discrimination

NACA contends that the affinity group, GIT, and incentive group fares are unjustly discriminatory and, therefore, the Caracas agreement must be disapproved. The affinity group fares are said to be unjustly discriminatory because of the requirement for prior affinity among the members of the group. The incentive fares are challenged on the grounds their use is limited to transportation in connection with an organization's incentive award program. Finally, the GIT fares are alleged to be unjustly discriminatory because they are sold only in connection with inclusive tours.<sup>9/</sup>

The fact that group fares are restricted to groups with prior affinity does not in itself render them unjustly discriminatory. Affinity charters, which the supplementals desire to be protected from this type of competition, are restricted in the same manner. Both these types of affinity fares have long been part of the air-fare structure. The affinity restriction as to the group fares accomplishes the same purpose as that restriction in charters--i.e., it distinguishes the fare from individually ticketed services and limits the diversion from such services, which could be catastrophic if the fares were available to groups formed from the general public. In our 1962 decision, we found that the group fares were justified by cost and value-of-service considerations and that, in view of heavy public interest considerations, the affinity restriction did not render the group fares unjustly discriminatory.<sup>10/</sup> The factors on which we relied at that time were not limited to "the context of an adverse industry economic picture," as alleged by NACA. Indeed, these factors remain relevant considerations at the present time, and to these justifications may be added the competition of the growing number of affinity charters performed by the supplementals themselves. Public interest factors today are the same as obtained in 1962; these low group fares will benefit a substantial portion of the traveling public as well as the scheduled U. S.-flag carriers and will not, in our opinion, be detrimental to normal fare-paying passengers.<sup>11/</sup> Furthermore, contrary

<sup>9/</sup> Our decision in Docket 20781 deals with a similar issue concerning the CEIT fares and our decision there that the inclusive tour requirement does not constitute an unjust discrimination applies equally with respect to the GIT fares.

<sup>10/</sup> 36 C.A.B. 33.

<sup>11/</sup> Under the Caracas agreement, new excursion fares will also be available to the individual passenger.



to NACA's contention, we have not by any subsequent opinion changed our view as to the legality of affinity group fares. While as a matter of policy we might prefer that these fares not be so restricted as to availability,<sup>12/</sup> we do not conclude that they are unjustly discriminatory.

Although NACA adverts to the Board's condition on the earlier incentive group fare resolution which would make the fares available to single entity users, whether or not profit-making organizations, it rests its contentions of discrimination on the basis that the resolution maintains the requirements restricting their use to employees or dealers of the user who must travel under an established incentive travel program. We believe it is quite clear that the intention of the Board's condition on its earlier approval of this resolution was to make the fares available for single entity use by both profit and nonprofit organizations, and irrespective of whether the group travels under an established incentive program. This same condition will carry forward under our approval of the Caracas agreement.

The foregoing considerations, together with the circumstance that the affinity group fares are a competitive response to the affinity charter rates and services of both the supplemental and IATA carriers, lead us to conclude that the affinity group fares and incentive group fares, as conditioned, are not unjustly discriminatory. As earlier noted, the affinity travel market is large and growing. There is no reason why it should be confined to charter flights to the potential detriment of the scheduled services. It is well established that competitive necessity may justify rates or fares or conditions of carriage which otherwise might be unlawful.

In summary, the Board finds that the transatlantic passenger fares which comprise the Caracas agreement are not unreasonable, or unjustly discriminatory, or otherwise in violation of the Act or adverse to the public interest. The traveling public is clearly benefited by the proposed fare structure. Not only are lower fares offered for certain types of group travel but the individual traveler will have a much more favorable range of discounts to choose from. The U. S. carrier members of IATA will also be benefited by approval of this agreement in terms of the stability inherent in an agreed rate structure for the next 13 months. It is also likely that the establishment of excursion fares for 29-45-day trips, as well as the new fares for affinity groups of 80 and 100 (westbound from Germany), will provide a basis for a substantial increase in travel by Europeans to the United States thereby mitigating the balance of payments deficit in the travel accounts. Plainly, this result would

<sup>12/</sup> See 38 C.A.B. 1062 (1963).

